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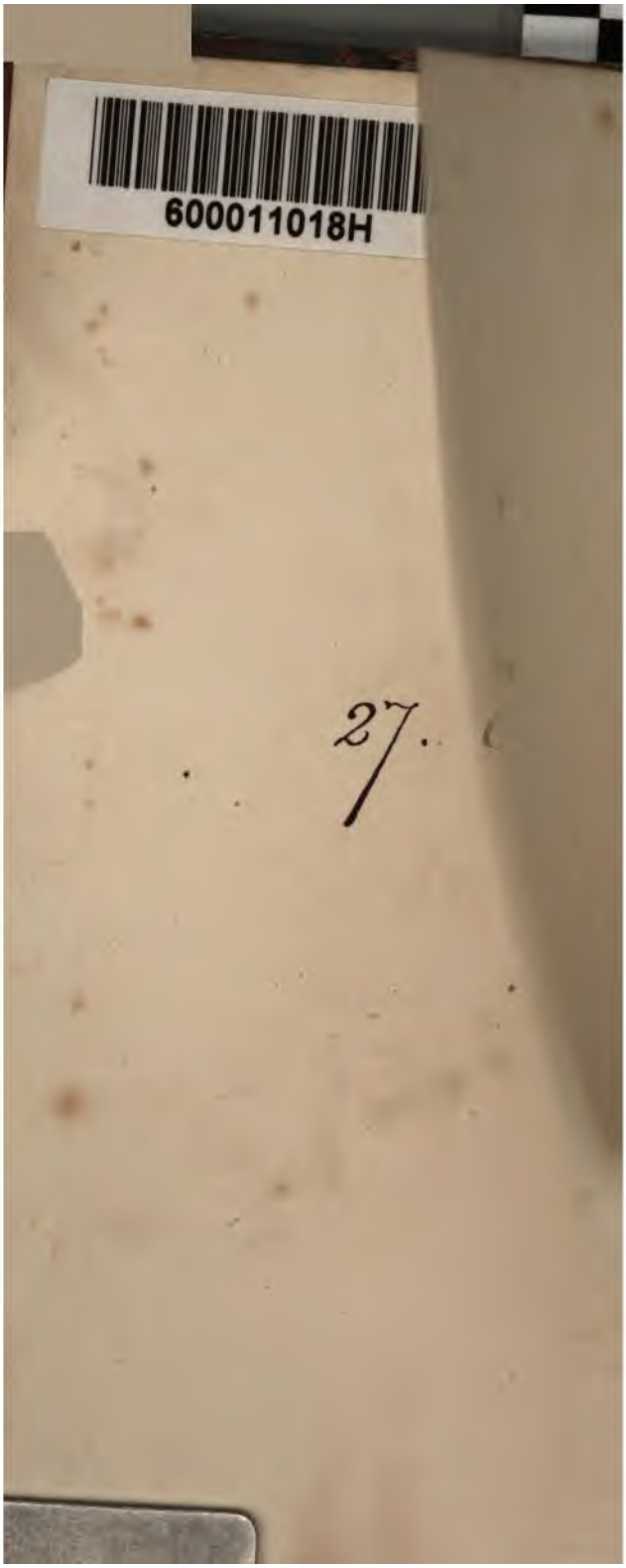
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CATHOLICISM IN AUSTRIA.

CATHOLICISM IN AUSTRIA;

OR,

AN EPITOME

OF THE

AUSTRIAN ECCLESIASTICAL LAW;

WITH A

DISSERTATION UPON THE RIGHTS AND DUTIES OF THE ENGLISH GOVERNMENT,

WITH RESPECT TO THE

CATHOLICS OF IRELAND.

BY COUNT FERDINAND DAL POZZO,

LATE MAÎTRE DES REQUÊTES, *AND FIRST PRESIDENT OF THE IMPERIAL COURT OF GENOA.*

Religious liberty is, like civil liberty, not an immunity from restraint, but the being restrained by no law, but what in a greater degree conduces to the public welfare.—PALEY's *Principles of Moral and Political Philosophy*, b. vi. ch. 10.

LONDON:

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TO

THE FRIENDS AND OPPONENTS

OF

CATHOLIC EMANCIPATION.

It is almost impossible for a foreign Roman Catholic to have resided, for any length of time, in England, without forming some opinion upon what is called the Catholic Question. It was indeed more difficult for me than for many others to refrain from entertaining a decided opinion on this subject, as all the circumstances of my life have imposed upon me the duty of studying ecclesiastical affairs with reference to civil government, and of closely investigating, with the same view, the systems of different States.

To suppose that all foreign Roman Catholics resident in England, looking to the present state of the Irish Roman Catholic Church, are favourable to the full emancipation of their Catholic brethren, that is to say, to their admission to all political rights without limitation, is a great mistake. Among them are many of its opponents, without, however, being, on that account, less attached to

their religion, or to their Catholic brethren. Certainly not; but their opposition arises from a fear lest, by freeing Catholicism from all restraint, it might eventually become the means of introducing despotism.

On the Continent, popular opinion is almost unanimous in favour of full emancipation. The Liberals desire it for the sake of principle. The Anti-liberals wish it still more ardently; for great are the hopes which they build upon it—hopes, of which I shall have occasion to speak in the course of the following *Dissertation on the Rights and Duties of the English Government, with respect to the Catholics of Ireland.* The coincidence of their sentiments upon this single point is very remarkable, since two parties, so hostile in every other respect, are fully agreed upon this matter.

For my own part, a middle course between continued restrictions and immediate emancipation, is the only one I can prevail upon myself to think should be adopted. I am decidedly for full emancipation, but an emancipation for which wholesome laws had previously paved the way. My opinion is, that all the disabilities under which Catholics still labour*—disabilities both

* There are many remaining, besides exclusion from Parliament, as will appear from the Dissertation.

of law and of fact—should be instantly removed, and that the Catholics should be placed upon an equal footing with Protestants, in the enjoyment of civil and political rights—excepting only their admission into Parliament, which I would defer until the effect of those laws, which I have said should precede emancipation, had been fully ascertained.

The delay which I propose, is not so much with the view of subjecting those laws to experiment, as of inducing Catholics not only not to counteract their operation (particularly upon their first enactment), but to assist it by every means in their power. Hope is far more powerful in its effect on men than gratitude—and the necessity of repealing any part of what had once been granted, ought to be placed beyond even the possibility of occurring.

But it may be impatiently asked—What are those laws? I can here merely point out their general scope; which is, that the legislature of this country, instead of continually, more or less, repelling Roman Catholicism, should lay protecting hands upon it; place it, without any *concordat*, and only by the indisputable right of sovereignty, under the control of the State go-

vernment; regulate the exercise of its worship; disentangle it from superstitions (I mean those superstitions which are recognised as such by enlightened and upright Roman Catholics), and from the exaggerated pretensions of the Court of Rome; render, as to its external policy, the King of England almost as much the head of Catholicism, as he is of Protestantism; and finally, assimilate, as much as possible, Catholics and Protestants to each other.

Can this be done without injury to the substance of Catholicism, or to the reasonable liberty of the members of that communion? Certainly it can—and to develop this system is the object of the first part of this work entitled "Catholicism in Austria," and of the subsequent "Dissertation upon the Rights and Duties of the English Government, with respect to the Catholics of Ireland," which I submit in common to the friends and opponents of emancipation. And this I do without the slightest presumption *. I have said to myself: if I could only

* In subscribing my name to this work, my sole object is to authenticate, in some manner, the new and important facts therein related, as well as to render myself responsible for the fidelity of the extracts which I have made from the Austrian laws. I am aware that, by so doing, I expose myself to much obloquy, and, perhaps,

induce both parties to consider this so much agitated question, under a different point of view from every other in which it had hitherto been examined and discussed, even that would be a favorable result*. Mr. Pitt himself sought for information, by consulting foreign Universities. I trust that his countrymen of the present day will feel inclined to follow his example, and that the voice of a foreigner, therefore, will sound neither disagreeably nor unbecomingly.

London, January 14, 1827.

also, I may incur the displeasure of both parties. This, however, shall not deter me. It has long been my lot to make sacrifices to the public welfare—or at least to what I have considered such.

* "Catholicism in Austria" may also be useful for another purpose, that of exhibiting to the present generation of Englishmen, who have received but a slight idea of Catholicism, the interior structure of this vast, ancient, and very complicated machine, with its various springs, and the motions of these springs in different directions. All that is generally known of it, at the present time, in the United Kingdom, is merely its exterior form, with a few scanty details, and even this limited knowledge exists in the most vague and superficial manner. But should Catholicism according to the plan, of which I intend only to give a sketch, be rendered a subject for legislation, and should men of different persuasion be called on to apply legal enactments to particular cases in matters of such importance, it is evident that in that case a more extensive and positive knowledge of Catholicism becomes indispensable. "Catholicism in Austria" will, I hope, on this hypothesis, afford sufficient information on this interesting subject.

POSTSCRIPT.

HAVING inclosed a copy of the title-page and the preceding Address to a learned gentleman of my acquaintance, he, by way of reply, stated to me some objections, which, as they seem very plausible at first sight, and may so appear to the minds of other persons, I have thought it expedient to lay before the public, and to submit, at the same time, the answers and explanations which they have suggested to me. My only wish is the promotion of truth: I will, therefore, omit no opportunity of throwing as much light as possible upon the complicated subject which I have attempted to discuss in the present work.

OBJECTIONS.

" 1. Whatever laws may be necessary to re-
" gulate the communications between the Court
" of Rome and the Roman Catholics of Great

" Britain and Ireland, and I have no doubt that
" many such laws will be necessary, the Par-
" liament will be better qualified to enact them,
" when composed in part of Roman Catholics;
" and both the clergy and laity of that per-
" suasion will be more readily inclined to ac-
" quiesce in these laws, when members of their
" own communion assisted in making them, and
" had an opportunity of stating their reasons for
" or against them, before they were enacted.
" For this reason, I think, Roman Catholics
" ought to be admitted into Parliament before
" any attempt is made by legislative enact-
" ments to regulate their intercourse with the
" Court of Rome.

" 2. You cannot use a phrase so hateful to
" English Roman Catholics, as to say that the
" king of England will be the head of the Ca-
" tholic Church in England; and for that reason
" the phrase should be avoided; and for another
" reason it should be laid aside even when
" speaking of the English Protestant Church,
" which is, that the oath of supremacy, de-
" claring the king to be head of the Church,
" was abolished at the revolution; and the pre-

" sent oath of supremacy, which is no more than " an oath of abjuration, substituted in its place. " Since that alteration in the oath of supremacy, " no layman is bound to consider the king as " head of the Anglican Church."

ANSWERS.

" With respect to the first objection, I have only " to observe, that to admit, in the present state " of things, the Roman Catholics into Parliament, " is to grant to them instantly full emancipation. " This opinion, as it is maintained by many " wise statesmen, has certainly some founda- " tion; but it is not mine. I think, for my part, " (and it is the object of the work which I intend " to publish,) that complete emancipation cannot " be granted with safety to the political and re- " ligious liberties of this country, if Catholicism " be not purified by appropriate laws, and the " effect of these laws be not previously ascer- " tained by experience. On the merits of this " opinion I beg you to defer your judgment till " you shall have perused my work. But, sup- " posing this opinion well founded, it would be " quite inconsistent for me to allow the Roman

" Catholics to sit in Parliament, in order to fa-
" cilitate the framing of these very laws, which,
" in my opinion, should precede emanicpation,
" and are relating not only, as you suppose, to
" the intercourse with the Court of Rome, but
" also to other affairs of their religious society,
" to which I alluded in the Address. It would
" be, on my part, to grant in one shape what
" I refuse in another. Besides, when the end is
" attained, it is superfluous to dispute about the
" means.

" But I am far from thinking, that the introduc-
" tion of Roman Catholic members into Parlia-
" ment would, in the present state of times and
" circumstances, facilitate legislation about Ca-
" tholicism. It would, on the contrary, render this
" task infinitely more contestable and difficult;
" I dare say, almost impossible. Out of Par-
" liament, every Catholic has many means of
" manifesting his opinions, and informing the
" legislature; and that is sufficient. Neither
" can it be expected, that the generality of the
" Catholics of this country would at first coin-
" cide in these laws of which I have spoken.
" Many of them are divided in their opinions—

" sent oath of supremacy, which is no more than " an oath of abjuration, substituted in its place. " Since that alteration in the oath of supremacy, " no layman is bound to consider the king as " head of the Anglican Church."

ANSWERS.

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" belong to the Established Church.—In the " second place, when I say that, by the laws " intended to regulate Catholicism, the King of " England will become *almost as much the head of* " *Catholicism as he is the head of Protestantism*, I " state a proposition, which is incontestably true, " and, besides, there will be no novelty in that. " History informs us, that many emperors, and " other princes, have legislated upon ecclesias- " tical matters, convoked councils, presided in " them, nominated to the dignities, offices, livings " of the Church; regulated the discipline of the " clergy, and frequently the rites of worship; " decided or directed their tribunals to decide " ecclesiastical controversies, &c. Is not all " this to act, in some respect, as the head of the " Church? Does not the Emperor of Austria " interfere infinitely more in the ecclesiastical " affairs of his dominions than the Pope him- " self? This fact will be manifestly and abun- " dantly proved in the abstract which I give " of the Austrian Ecclesiastical Law. But what " is there surprising in this? If the Church is in " the State*, why shall not the head of the State

* That is repeatedly asserted and proved in the treatise entitled " Catholicism in Austria."

" vacillating in their resolutions—a great num-
" ber influenced by ignorant or crafty men.
" These laws, then, are only to be considered as
" obligatory clauses of the present toleration of
" Catholicism; nay, of its future legal admission
" into the State; and, although they are, for this
" reason, highly beneficial to the Roman Catho-
" lics, and will be more so for the time to come,
" these laws ought, nevertheless, to be enacted
" without them. They are but mild substi-
" tutes for the severe penal laws, for which
" certainly no consent of the Roman Catholics
" was required—and substitutes with this very
" wide difference, that the object of the lat-
" ter was to put Catholicism out of the pro-
" tection of the Law, while that of the former
" will be to reinstate Catholicism in its ancient
" civil capacity.

" As to the second objection, I consider, first,
" that there is not the least doubt, that, even
" in the present day, the King of England is
" the head of the Anglican Church*, although
" no person is obliged to recognise, by oath,
" this character, because nobody is obliged to

* Stat. 30. Geo. II. cap. 25.

" belong to the Established Church.—In the " second place, when I say that, by the laws " intended to regulate Catholicism, the King of " England will become *almost as much the head of* " *Catholicism as he is the head of Protestantism,* I " state a proposition, which is incontestably true, " and, besides, there will be no novelty in that. " History informs us, that many emperors, and " other princes, have legislated upon ecclesias- " tical matters, convoked councils, presided in " them, nominated to the dignities, offices, livings " of the Church; regulated the discipline of the " clergy, and frequently the rites of worship; " decided or directed their tribunals to decide " ecclesiastical controversies, &c. Is not all " this to act, in some respect, as the head of the " Church? Does not the Emperor of Austria " interfere infinitely more in the ecclesiastical " affairs of his dominions than the Pope him- " self? This fact will be manifestly and abun- " dantly proved in the abstract which I give " of the Austrian Ecclesiastical Law. But what " is there surprising in this? If the Church is in " the State*, why shall not the head of the State

* That is repeatedly asserted and proved in the treatise entitled " Catholicism in Austria."

" be, in this respect, more or less as he pleases,
" also the head of the Church?

" Then it may be truly affirmed, that the Ca-
" tholic Church has not only one head, but two
" and even three heads, if you add to the Pope,
" and to the Sovereign of the country, when he
" chooses to be so, the invisible head, its divine
" Founder. There were two consuls at Rome—
" there were several times two emperors—and in
" other countries two kings—England has seen
" a king and a queen reigning together—in other
" political societies, supreme magistracy was,
" and in others still is, divided equally, or almost
" equally, between several persons. It is clear,
" therefore, that the denomination *head*, in a
" moral body, is not always confined to unity—
" much less, when it is employed with a differ-
" ent view, or related to a different position of
" the same body.

" To return to our subject, I will confidently
" say, that at the same time that the Pope will al-
" ways be considered as the head of Catholicism
" as to the spiritual jurisdiction, and dogmatic
" matters, the King of England may, by the au-
" thority of the acts of Parliament, assume, with
" great propriety, and without any inconsistency,

" the functions of the head of Catholicism *as to*
" *the external policy of this persuasion.* I have,
" however, no difficulty to subjoin these words
" to my phrase, for better explaining the true
" meaning of it. This addition, I am afraid,
" will not prevent several Catholics from taking
" offence at my expression. The enactment of
" these laws also, which I think indispensable,
" will be still more unpleasant to them. But I
" will frankly ask you, if it be possible to cure
" the evils, with which the Catholic body is
" somewhere afflicted, without disagreeable me-
" dicines, and even painful operations. It seems
" perfectly evident, that it must be rendered
" completely wholesome, and not liable to re-
" lapse, before it is introduced into the supreme
" political assembly.

" In the third place, and finally, I consider it
" a far wiser plan, even to flatter the Protestants
" a little—to excite their favourable feelings—
" to assuage their fears—and to render them com-
" pletely secure respecting their civil and reli-
" gious liberties—(and it will be the necessary
" effect of showing Catholicism—no more in
" hostile array—but under the same banner—

" that is to say, headed by the civil government,
" as Protestantism is)—than to employ either
" presumptuous or adulatory expressions to my
" Catholic brethren. Let us only look at the sub-
" stance, and consider, that what is more neces-
" sary now, is to conciliate the Protestants, from
" whom—and whom alone—emancipation can
" proceed; and content ourselves with the great
" beneficial result so long disputed, so difficult
" to be obtained, and which will easily, and,
" I will say, naturally drop, as a ripe fruit from
" a well-cultivated tree, if the affairs of Catho-
" licism be prudently managed."

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CATHOLICISM IN AUSTRIA;

OR,

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OF THE

AUSTRIAN ECCLESIASTICAL LAW.

INTRODUCTION.

THE Episcopal Chancellor of Lintz, George Rechberg, composed a work, entitled, "Enchiridion Juris Ecclesiastici Austriaci," with the intention of rendering a service to the clergy, and to the civil functionaries of the empire. It was even considered to be actually necessary, on account of the laws of Austria, which, with regard to the exterior form of the Catholic worship, have almost laid aside the use of what is commonly called the Canon Law.

This work obtained so high a reputation, that it was adopted as a text-book, not only in the universities of Germany, but also in those of Italy, in the states subjected to the Austrian dominion.

An Italian translation of it appeared, under the title of " Manuale del Gius Ecclesiastico Austriaco," and was printed at Venice, in 1819, by Francis Andreola, the authorised government-printer. This latter circumstance, and that which the translator himself states in the preface, " that he had scrupulously made it a duty, *as he had been commanded*, to adhere literally to the text," may point out the extent of confidence, I should rather say, of authority, which that work deserves.

I have extracted from it the most remarkable passages, and those which may best afford an idea of Catholicism in Austria. It is a system of doctrine, in the formation of which, under the reigns of Maria Theresa, Joseph II., and Leopold II., the most learned German and Italian political writers, civilians, and canonists, have co-operated, which has been maintained in practice a sufficient time to appreciate its effects, and which well deserves to fix the attention of other nations and of other governments. It is a far better system than that of the celebrated Gallican Liberties. The extracts are made with fidelity, and with as much regard as possible to brevity, method, and perspicuity, in order to diffuse more extensively the knowledge of this system.

AUSTRIAN ECCLESIASTICAL LAW.

BOOK I.

OF ECCLESIASTICAL LAW IN GENERAL, AND ITS DIVISIONS.

CHAP. I.

Of the Christian Church in General.

1. THE Catholic Church is a Society, that is to say, a congregation of men, connected by common laws, having a settled object: which is, in this life, the fulfilment of religious duties, and, in the life to come, eternal salvation.

2. It is divided into an invisible, and a visible, or external Church. The characteristic signs of the visible Church are:—

i. The creed of faith, that is to say, the fundamental points of its doctrine:—ii. The acts of external worship, preaching, the use of the sacraments, the liturgy, and the different institutions of ecclesiastical discipline, subject to alte-

ration:—iii. Its peculiar constitution; that is to say, the laws of the society, which regulate the method and order in which its social affairs are to be administered.

This constitution is founded upon that power of directing ecclesiastical affairs, which belongs to its rectors, according to their respective order and rank.

3. The kingdom founded by Jesus Christ not being of this world, the subjects of that kingdom, as such, should neither seek nor hope for terrestrial possessions; on the contrary, they should rather renounce their own inclinations*, carry his cross, and follow the example of Christ†.

4. Every person is free to enter or not to enter into this Church. No means of coercion are permitted on account of matters relating to this society.

5. Hence, as the Church is a visible and external society, it follows that, with good and holy institutions, some very pernicious things may surreptitiously glide into it. It may in this respect be compared to a field sown with good seed, but in which, in the midst of the good corn, tares have sprung up; or to a net cast into the sea, which gathers at once good and bad fish‡.

* Matt. ch. xvi. v. 24, and 25. † Matt. ch. xx. v. 22.
‡ Matt. ch. xiii. v. 24, 30, and 47.

6. The tenets of the Catholic Church are to be considered as immoveable, and essential to the preservation of its unity. All the rest, which is known by the name of the discipline of the Church, is accidental, adventitious, and subject to change. Hence may be deduced the principle of the perfectibility of the Church.

With respect to its dogmas, that is to say, its essential points, the Church must be regarded as infallible, Jesus Christ having promised to the apostles the especial assistance of the Holy Ghost. But, in order that the Church may experience the effects of that promise, it is not in the least necessary that any miracle should now be performed, the general irection given by Divine Providence being sufficient upon that point.

Chapter II.

Of Ecclesiastical Right.

7. Right arises out of the natural liberty of action, provided that he who acts restrains himself within the limits fixed by law. For every one must be convinced, that the liberty of all cannot exist simultaneously, unless every individual exercises his own liberty with such mo-

deration that others may not be disturbed in the exercise of theirs. Right may, therefore, be defined, that which any man is permitted to do, or to require from others, within the limits determined by law. Besides, law itself has restricted this exercise of liberty by certain conditions, the observance of which assures the enjoyment of liberty to all. Each individual may be compelled to submit to these conditions; and every one may do, or is obliged to permit another to do, all that is not adverse to these conditions.

8. In order that the exercise of individual right might be rendered easy, and secure from violation by others, a reciprocal convention became necessary,—i. To establish conditions of ownership; ii. Conditions of common safety. Hence civil society had its origin—that is to say, from the compact of union among its individual members, and from their joint submission to one supreme power, which in every civil society men have found it necessary to establish. This supreme power represents the general will, and ought to direct to one common end the physical energies of all. One of the effects of this institution of society is to protect, reciprocally, by the means of the united physical strength of all, the rights of each individual, against those who may

be tempted to violate them. And the employment of this physical strength depends, in every case, upon the supreme civil power.

9. Every individual having the right of doing whatever does not in any way infringe upon the liberty of others, each person is permitted to associate himself with others, in a particular manner, and with a view to determinate objects, thus uniting their resources, and contracting between themselves obligatory engagements. A new social law is then introduced with regard to the men who compose this new society, each of whom becomes bound by new restrictions, and admits new limits to his liberty. Hence arise social rights and duties. But this new social law itself requires the approbation of the supreme civil power, and can only become valid upon condition that it does not prejudice public liberty, nor in any manner injure the interests of civil society. By the approbation of the supreme civil power, particular social rights become at once rights civilly available, and enjoy the protection of civil society, even for the purpose of physical coercion, when, and as far as, by the special nature of that particular society, that coercion may be required.

10. The principles just stated apply to ecclesiastical associations with as much force as to any

other individual society. He who becomes a member of an ecclesiastical society, imposes upon himself duties, and acquires rights with respect to the Church. These rights and these duties are determined by ecclesiastical laws. There are, therefore, ecclesiastical rights which belong to the Church as to a moral person, not only with respect to the members of the Church itself, but to those who are not members of the Church; and there are also ecclesiastical rights appertaining to the members of the Church, reciprocally, with regard to each other, and between each member of the Church and the whole Church itself.

11. The *ecclesiastical* rights which belong to a Church, whether approved, or only even tolerated by that civil society, in the bosom of which it exists, are also *legitimate civil* rights, for the defence of which civil coercion may be permitted, if it is required, solely, however, for that which relates to exterior acts. Although religion—the maintenance of which is the object of every ecclesiastical society—consists principally in interior arts of worship, that are not subject to any coercion, it cannot, however, be denied that the Church, as an external society, has need of external means of assistance, and of institutions adapted to that end. Such are the statutes

which establish the external method that the ministers of the Church ought to follow, in the charge committed to them, of teaching the precepts of religion—the reciprocal rights and duties of the bishops, or of the other superiors or subjects of the Church—the determination of the jurisdiction belonging to the different orders of the clergy, according to their hierarchy—the mode of bestowing benefices, and other matters of a similar kind. The rights which are derived from these statutes may be, in case of necessity, maintained by the use of external coercion. This, however, does not exclude the Church from the right of employing ecclesiastical coercion, which may, indeed, be sometimes usefully exercised, and which consists in partial or total exclusion from the ecclesiastical communion.

12. The true Church, not operating to the prejudice of civil society, cannot properly be rejected by it. But if the Church be rejected by it, as it was in the first ages of the Christian Era, and in the time of the persecutions, the ecclesiastical rights belonging to the jurisdiction of the Church should remain untouched and guarded by ecclesiastical sanction; but they could not be regarded as rights civilly available.

13. The collection of ecclesiastical laws, concerning the rights and duties of the Church, and

of its members, in what regards the exterior worship, is entitled *Canon Law*, or ecclesiastical jurisprudence. All that has relation to dogmas of faith, and to morals, is included in those two branches of theology, generally called *dogmatical* and *moral.*

14. The ecclesiastical law, considered with respect to its origin, is divided into *divine* and *human.* The first includes the divine laws, both *natural* and *positive.* The second, those enacted either by ecclesiastical* or civil power.

15. The ecclesiastical law, considered with regard to its object, is divided into *public* and *private* law. The *public* law is again subdivided into *internal* and *external.* The ecclesiastical *public* law determines the rights and duties of the whole Church, and of those who in the Church have any jurisdiction. The ecclesiastical *private* law determines those of each individual in the Church. The *public internal* law is

* The ecclesiastical hierarchy, whether of order or of jurisdiction, consists partly of *divine*, partly of *human* right. To the hierarchy of order by divine right belong the bishops, the priests, and the deacons; and to that of *human* right, belong the sub-deacons, and those in minor orders. As to jurisdiction, the *divine law* acknowledges no other degrees than those of bishops, of the Pope, as head of the Church, and of priests. The *human right* has introduced, 1st, Some superiorities among the bishops, such as patriarchs, exarchs, primates, and metropolitans; 2nd, Different species of coadjutors of bishops, under the name of vicars, chapters of cathedrals, prelates, non-bishops, and curates.

that which regards the constitution of the Church, or rather, the rights and duties of those who have any jurisdiction in the Church relatively to its members. The *public external* law has for object, the relations which the Church has, either with civil society, or with any other ecclesiastical sects, as well as the rights and duties which proceed from such relations.

16. The ecclesiastical law admits of another division, which arises from the connexion which it has with the subject over whom it decides. *Common law* is that which exercises its authority equally over the whole Church; and *private* law is that which belongs only to some particular Churches.

Chap. III.

Of the Sources of Ecclesiastical Common Law.

17. The ecclesiastical common law, whether *divine* or *human*, is *written* or *unwritten*.

18. The books of Holy Scripture are the genuine sources of the Divine written law. But it must be remarked, that we are not to look on the volumes of the Old Testament as such, though they may sometimes serve to interpret that which

is contained in the New Testament. The reason of this is, that the Jewish laws, whether political or ceremonial, were entirely abrogated by the new law of Christ*.

19. And with regard to the New Testament, we must diligently distinguish the divine pre-

* Mably, in his "Observations on the History of France," (book ii. ch. 1.,) remarks the abuse which had been made of some passages of the Old Testament, by applying them to modern affairs, whether civil or political. Speaking of the origin of the coronation of the kings of France, he says: "Until Pepin, the inauguration of the kings of France had been only a pure civil ceremony; the prince, elevated on a great shield, received the homage of his army, and was thus invested with all the authority of his forefathers. Pepin, in order to render the commencement of his reign more dignified in the eyes of his subjects, made it a matter of religion, and transferred to the French a custom which existed only among the Jews. Having been first consecrated by Boniface, bishop of Mayence, who was then so celebrated for his sanctity, he procured the ceremony to be repeated by Pope Stephen III., who came to implore his protection against the Lombards. The pontiff, who also crowned Pepin's sons, did not fail to call them, as well as their father, the anointed of the Lord. He caused an entire confusion of ideas; and by applying the principles of a government wholly divine, and the secret springs of which were so many miracles, to that of France, which God had left to the natural law, the law common to all men, he compared the dignity of Pepin to the royalty of David, which was a species of priesthood, and which the Jews could not resist without committing sacrilege. The French had freely elected Pepin; and though no prophet from God had ordered them to do so, yet the pontiff told them, that the prince held his crown from God alone, through the intercession of St. Peter and St. Paul, and even menaced them with the censures of the Church, if ever they deviated from that fidelity and obedience which they owed to Pepin and his posterity." How many abusive arms have been wrested from the priests by the manner in which the ecclesiastical law of Austria considers the books of the Old Testament!—*Note by the Editor.*

cepts given by Jesus Christ himself, or by his apostles in his name, from those institutions purely apostolic*, which belong to *ecclesiastical human law*, and which are susceptible of change; such as the precept of abstaining from blood; from strangled animals; from love-feasts; the obligation imposed on women to veil themselves; and baptism by immersion †.

20. The natural law is one of the sources of *ecclesiastical divine unwritten law*, because the laws of nature being universal, necessary, and unchangeable, ought to be applied also to ecclesiastical affairs. The rights and duties of the Church, with regard to civil society, ought to be deduced from that law of universal civil society, which forms a part of the natural law.

21. *Tradition* is another source of *ecclesiastical unwritten law:* it is, according to its object, *dogmatical*, that is, regarding dogmas of faith; or only *disciplinary*. The latter is purely human and changeable.

22. The ecclesiastical human law is composed of the canons of the Church, which are either *universal*, such as the canons of General Coun-

* "Præcipio non ego, sed Dominus,"—Epist. 1. ad Corinth., ch. vii. v. 10.—"cæteris ego dico, non Dominus."—Ibid. v. 12.

† Acts of the Apostles, ch. viii., v. 38 et 39; chap. xv., v. 29; Epist. 1. ad Corinth., chap. xi., v. 5 and 33.

cils; the decretals of Popes, when they do not exceed the limits fixed to their authority as heads of the Church; or *particular*, such as the decrees of particular Councils, and of bishops.

23. In order that ecclesiastical decrees should be obligatory, they must be known by all the faithful, and consequently legitimately published; and we certainly cannot consider as a sufficient and obligatory publication, that which is sometimes made known only at Rome. We shall speak afterwards of the right, called *Placet Royal*, viz. that all governments have, of either permitting or refusing the publication of any ecclesiastical decree, as well as of the right that bishops have of examining the laws of discipline, whether they be suited to the systems, usages, or wants of their respective dioceses.

24. The obligation of an ecclesiastical law *totally* ceases, either at the express will of the legislator, or by the tacit one, which happens when he permits any contrary usage or practice to be introduced. That obligation also ceases, but *partially*, either by a dispensation or a privilege.

25. A dispensation is a relaxation of the law, which the superior grants for some just cause in favour of some particular persons, or for some particular cases. When we shall speak of *public*

ecclesiastical law, we shall then explain to whom the power of dispensing belongs.

26. A privilege is a special order, by which the superior grants something to any individual, on account of his deserts, or intrusts him with some extraordinary rights. Privileges are either *personal* or *real.*

27. A dispensation regards individual acts, whereas a privilege more frequently includes all acts of the same species, and creates, as I may say, a new right.

28. A multitude of irrefragable historical documents attest, that Christian princes had, as defenders of the Church, not only frequently confirmed ecclesiastical canons, and placed them on a level with civil laws, but, moreover, that, in matters of discipline affecting in any manner the welfare of society, they had enacted many laws, which the bishops received, as subjects, and faithfully observed. Innumerable examples of these are to be found in the codes of the Emperors Theodosius and Justinian, and also in the capitularies of the Frank kings.

29. When we shall speak of the *public external law*, we shall prove, more at large, this kind of power to belong to the supreme civil authority. Hence it follows, that those royal decrees form likewise a part of the *ecclesiastical human written law.*

30. With respect to *custom* or *practice*, it is to be observed, that we must sometimes distinguish it from simple *usage*: *custom*, or *practice*, properly so, regards objects which should be matters of law; and consequently, the tacit consent of the legislator, at least, is necessary to its validity. On the contrary an *usage* can be introduced by the sole tacit consent of the parties interested. But that cannot take place except in matters susceptible of being regulated by mere private conventions.

31. It is very important to discriminate *customs and usages* from *abuses and corruptions*. It would be an unfair conclusion indeed, in order to establish any usage, to plead the tacit consent of the parties in its favour, particularly if such consent spring from an essential error. This last observation is especially applicable to those ecclesiastical usages, which owe their origin to the forged decretals of Isidorus, of which we shall soon speak, as also to the errors which ensued from them.

There are some ecclesiastical rights, which those who enjoy them neither could nor can renounce, either expressly or tacitly. Those rights are such as have been introduced, not in favour of those to whom they were attributed, but for the general good of the Church.

Whence it may be inferred that the bishops, in

pal reservations enforced by usage,
sume the exercise of their primitive
ften as the good of the Church, which
ef law, requires it.

Chap. IV.

Of the Collections of Ecclesiastical Common Law.

32. The ecclesiastical common law admits of a triple division, such as the *ancient*, the *modern*, and the *most recent*. The *ancient* law includes the canons enacted from the very establishment of the Church, to the collection formed by Isidorus, and even to the Decretum of Gratian.—The *modern* contains all the collections which have been inserted in that which is called the body of canon law: that is to say, Gratian's Decretum; Gregory IX.'s decretal; the sixth book of decretals; the Clementines; the *Extravagantes* of John XXII., and the *Extravagantes Communes*. All that is posterior to these, comes under the name of the *most recent* law. The first period has a particular ch tic, on account of its simplicity, its utili salutary rigour of the canons. The se which had been contrived a new and i cal system, in

which the Church had assumed power over temporal affairs, and applied to ecclesiastical matters the rules of civil proceedings. The number of canons increased immensely, and the ancient discipline had been considerably altered. In the third period some steps were taken to correct the abuses which had crept in during the preceding period, but the success did not answer the expectation.

33. The famous collection of Isidorus, surnamed *Mercator*, which appeared towards the end of the eighth century, was the cause of a very remarkable alteration of discipline, and most grievous abuses. The direct aim of this impostor was the depression of the episcopal authority and provincial Councils, in order to elevate to the highest pitch the power of the Roman Pontiff. It is by means of those forged decretals, that it was maintained that the permission of the Pope is necessary to hold provincial Councils,—that he alone has the power of translating a bishop from one diocese to another; and from that also has originated the unlimited usage of appeals to the Pope, &c. &c. Fleury informs us how much ecclesiastical discipline has suffered from such innovations *.

* Discourse XI. on Ecclesiastical History.

34. The collection of the Frank capitularies has had a particular authority in the churches of Germany. It is well known that these capitularies were so many laws passed in public assemblies, where the bishops repaired with the lay states of the empire, and ecclesiastical affairs were regulated.

35. Gratian's Decretum, notwithstanding all the reformations commanded by Gregory XIII., still swarms with errors.

36. With regard to the body of canon law in general, it is to be remarked,—

i. That the Popes never prescribed that this body should have the force of law, in any place whatsoever; and, besides, they could not have done so without the consent both of the civil government, and of the bishops;

ii. That it forms only a subsidiary law, introduced by usage, for want of a special law;

iii. That it has no authority in the *public ecclesiastical law*, as often as it comes in opposition either with the sound principles of ecclesiastical government deduced from holy writ or from tradition, or with the rights of universal civil society;

iv. That even in *private ecclesiastical law*, the laws of the state, the ecclesiastical constitutions, and the legitimate customs of each country, ought to be observed in preference to it.

i. The constitutions, decrees, or other ordinances of the Sovereign as to ecclesiastical affairs;

ii. The Austrian customs and usages relating to the same matters;

iii. The general or special collections of those laws, which had been published at different periods, as well as the books of instruction designated by the Government, and which the Austrian universities, lyceums, and seminaries, are obliged exclusively to use.

41. The constitutions and decrees of the Sovereign form not only the greatest part of the *ecclesiastical private law*, which is now in force, but they very clearly prove what are the principles of *ecclesiastical public law* now received in the Austrian empire, and almost bestowed on civil society*.

* These are the literal words of the text of which I give the abstract. It appears that the meaning of them is, that the rights conformable to those principles, which civil society had for a long time lost, either by its own condescension, or by the usurpation of the clergy, were again restored to it.

Maria Theresa, in some instructions given to a royal junto, called the *Economat*, and accompanied with an imperial despatch of the 23rd of June 1768, expressed herself to the following effect: "All that is not of divine institution, belongs to the supreme legislative and executive power of the Sovereign. Every thing that had been granted or established by the supreme political power, and which this power could, at its pleasure, neither grant, nor establish, can, by the same reason, be changed, or entirely revoked, as well as every other law or concession of the legislator; for he not only can, but should adapt to times and circumstances his laws, his concessions, his establishments, present or future, according as the general welfare of the state requires him so to do."—*Editor's Note.*

One of the most remarkable of those constitutions is that of the 19th of December, 1781, where we see a celebrated answer given by Prince Kaunitz, supreme Chancellor of Austria, to the papal Nuncio at Vienna, and where we also see developed those rights, which the supreme civil authority ought to have over ecclesiastical affairs.

42. The bishops, the parish priests, and all the religious associations in Austria, are obliged to keep a protocol, in which the constitutions, decrees, or orders of the civil government, must be inserted in their respective places, and the protocol must have an alphabetical index. The protocol ought also to be accessible to those who wish to consult it *. The same constitutions, decrees, or orders, must be communicated to the professors of theology, that they may be able to teach publicly what in them is contained †.

Such of these constitutions, decrees, or orders, as most particularly concern the clergy, are to be sent by the civil government of each province to the bishop, who shall insert them word for word, without the least alteration or evasion, in the protocol, and shall notify them publicly to the clergy.

They are also to be communicated to the pre-

* Decrees of the 11th March, 1780, and of the 15th June, 1781.
† Decree of the 16th August, 1785.

fectures of the circles (a kind of provincial magistrates), in order that they may be able to give judgment upon these constitutions, &c. to such as may claim their protection, and that such magistrates may watch over their strict observance *.

It is further enjoined to all the tribunals, whether aulic or provincial, to prevent any episcopal consistory from swerving, in the least possible degree, from any thing ordained either by the constitutions, or by the decrees of the Sovereign, except when they may have obtained a special or express permission to do so †.

43. The constitution of the 11th November, 1769, prescribed, that a book entitled "*Theses ex jure canonico,*" &c., should be used in the public examinations upon ecclesiastical law. That book was changed in the year 1776, and another was introduced in its place. The title of the latter was "Synopsis juris ecclesiastici, publici et privati, quod per terras hæreditarias Imp. M. Theresiæ obtinet." It was ordained that, in the public discussions upon the canon law, no other thesis should be maintained, except those contained in this book, and that in none of the schools should any thing be taught contrary to its doctrines. The book entitled "Institutiones Pauli

* Decree of the 17th March, 1791.
† Decree of the 16th January, 1795.

Ruggeri," was also ordered to be employed as a text-book with regard to the matters of which it treated.

The constitution of the 24th December, 1784, introduced into the schools another book, having for its title "Jus ecclesiasticum universum Josephi Behem."

44. All those who in the Austrian states are destined for ecclesiastical cures, or even for the administration of civil affairs, are obliged to study the maxims of the Government with regard to ecclesiastical matters. This science has been, as it were, taken under the guardianship of the Sovereign. No person can be admitted into the higher orders of the Church, if he has not undergone an examination upon canon law. In all the competitions which are required to obtain parish rectories, this examination is also equally inispe nsable. Finally, all those who aspire to civil offices, to obtain which certificates of the study of the law is necessary, are obliged to give a proof of their having received instruction in ecclesiastical matters.

BOOK II.

OF THE INTERNAL PUBLIC ECCLESIASTICAL LAW.

CHAP. I.

Of the Origin of Ecclesiastical Power, and of its Nature.

45. JESUS CHRIST, in order to preserve and propagate his Church—not any longer in a miraculous manner, such as he had previously adopted—but in such a way as all other human institutions are conducted, substituted a human and visible power, which should regulate and execute all that was necessary to attain the end which the Church has in view, according to the diversity of its situations and necessities. Such a power was moreover requisite to maintain the bond of unity between all the members of the Church.

46. This power was not granted to St. Peter alone, but was also communicated to all the other apostles*. This is evident from several passages of Scripture, both in the Epistles of St. Paul and the Acts of the Apostles, which prove that all the apostles exercised this authority.

* Matt. xviii. 15, 18.—John xx. 21, 23.—Matt. xxviii. 18, 20.

47. As the welfare of the Church was the object kept in view by the institution of this power, and as this power was, besides, essential to the preservation of that communion, it follows, that it was not intended to cease at the death of the apostles. It must, therefore, have been transmitted, in an uninterrupted series, to regular successors, who are the bishops for the time being. St. Paul appointed Timothy bishop of Ephesus, and Titus of Crete. We often meet with the term "elders," both in the letters of St. Paul, and in the Acts of the apostles.

48. The faithful are bound to obey the instructions of these superiors, provided, however, that they confine their jurisdiction within the limits which Jesus Christ has prescribed to their power.

49. This power of the Church, whether considered with regard to its object, or the application of its means, is altogether spiritual, and is essentially spiritual in its nature. With respect to its object, St. Paul tells us, that power was given to the superiors of the Church, for the edification and sanctification of men, and not for any profane purpose whatsoever *. It is moreover manifest, that the Church has no other means at its disposal of coercing its subjects, than those which are requisite to instruct and exhort them,

* II. Ad Corinth. x. 8; xiii. 10.

and to exclude the refractory, that is, the disobedient, from all, or part, of the ecclesiastical communion.

50. If at any time occasions intervene, which involve matters of external order, and which tend only indirectly to interfere with the practice of virtue, and the Church is persuaded that external measures of coercion may with propriety be employed, they must then be requested from the civil powers, to which alone they belong, and not to the Church; for Christ has expressly said, that his kingdom was not of this world*.

51. The power of the Church ought therefore to keep itself entirely remote from the desire of domination, and ought to direct itself solely by the principles of charity, which constitute its fundamental law. It is, therefore, a duty incumbent on the superiors of the Church,—

i. To abstain from imposing any arbitrary yoke on the faithful, or of commanding any things that are not founded on the institutions of Christ himself, or may not be justified as indispensable to promote the well-being of the Church. St. Paul frequently recommends that the liberty of the Church should remain untouched†;

ii. Not to neglect the salvation of individuals,

* John xviii. 36. † Acts xv. 10.—1 Cor. viii. 35.—Ad Gal. V. 1.

under the plea of the benefit of the greater number. In civil society, the contrary rule is followed, and ought to be so. But, in the Church, the good pastor, in the midst of ninety-nine scattered sheep in the desert, ought to go in search of the single strayed sheep;

iii. To impose punishment, but with the view of effecting an amendment in those who shall be punished, and, at the same time, to relinquish every appearance of excessive rigour and severity;

iv. To avoid all human ostentation; to be humble, modest, and charitable, towards their inferiors *.

52. The power of the Church consists of two kinds; that of *ordination*, and that of *jurisdiction*. The power of *ordination* consists in performing the functions relating to external worship, and in administering the sacraments. It is termed the power of ordination, because it is acquired in consequence of being admitted into holy orders.

The power of jurisdiction is the privilege of

* Reges gentium dominantur eorum, et qui potestatem habent, benefici vocantur, vos autem non sic, sed qui major est in vobis, fiat sicut minor, et qui præcessor est, sicut ministrator. Luke xxii. 25, 26.—Pascite, qui in vobis est, gregem Dei, providentes non coactè, sed spontanee, secundum Deum, neque turpis lucri gratiâ, sed voluntarie, neque ut dominantes in cleris, sed forma facti gregis ex animo. I Peter V. 2, 3.

judging matters in ecclesiastical courts of justice.

53. Nevertheless, this division into power of *ordination*, and power of *jurisdiction*, does not mean to convey the idea that holy orders communicate the former power alone. For it is only in modern times that this difference was set up, and that ordination, by itself, was not considered sufficient for the exercise of jurisdiction. In the primitive Church, the members of the clergy were always ordained to exercise their ministry in a peculiar or specific Church. The consecration and confirmation of bishops were performed by one and the same act. At that time the modern practice of bestowing, separately, the powers of ordination and jurisdiction was totally unknown.

54. The ecclesiastical jurisdiction, or the power of deciding on Church affairs, is either *internal* or *external*. The former concerns matters of conscience, and is also termed *forum conscientiæ*. The latter is exercised externally, and contains in itself the power of making laws, which are termed, in the ecclesiastical style, canons, a word of more modest import. These canons are either *dogmatical*, or relating to discipline.

55. The Church does not issue new dogmas, but only makes new declarations, or gives reso-

lutions of doubts, when they become necessary. The laws of discipline regulate the accidental matters of the Church, and are subject to alteration and amendment. They either have a tendency to promote, indirectly, the edification of the faithful, or regulate, directly, external order.

56. As we have observed above (§ 51), that the superiors of the Church ought to abstain from imposing any arbitrary yoke, or commanding matters that have no foundation in the institutions of Jesus Christ, or may not be deemed indispensable to promote the well-being of the Church, it follows from these principles, that no ecclesiastical laws ought to be made without necessity, or for the evident benefit of the whole Church.

57. The following are corollaries to this fundamental rule :—

i. As the necessities of different Churches may be different, and as what is adapted to one Church may not be convenient, or may even prove injurious to another, it is in perfect analogy with the spirit of the Church, and with the nature of the ecclesiastical power, that if new universal laws of discipline are introduced, each bishop should have the power of examining them, to find whether they are suited or not to his particular Church; and if he is of opinion

that they are not suitable, he shall refuse to receive them, and promulgate them in his diocese;

ii. Having laid it down as a maxim in § 51, that it is not lawful in the Church to neglect the salvation of individuals, under the pretext of promoting the advantage of the greater number, it is clear from thence, that the laws of discipline, relating to each individual, possess no obligatory force, when they present an obstacle to his salvation, or when the spiritual advantage, which these laws have in view, cannot be attained. For as their object is to assist individuals in the practice of virtue, every other consideration lies out of their contemplation. But still it is to be observed, in such a case, that the individual who wishes to exempt himself from the obligation of any law whatsoever, is bound, by the veneration due to the Church, to solicit a dispensation, and thereby avoid every ground of scandal;

iii. The laws of discipline, if ever found to be contradictory to the divine precepts of the gospel, or to more important duties than the said laws, cannot be supposed to have any force.

58. The judicial power of the Church, which is derived from its legislative power, has reference only to ecclesiastical privileges, and to the punishment of ecclesiastical offences. It is either contestable or voluntary; but as ecclesi-

astical power of every description is spiritual only (§ 49), it is clear that the judicial power above mentioned ought to confine itself within the limits of spiritual matters that concern faith, morals, and discipline, and to take no cognizance of any offence, which is not, strictly speaking, ecclesiastical.

59. Every society possesses the right of removing, and even totally excluding, from its common rights and benefits, any member who may obstinately refuse to obey the laws of the society. It results from the very nature of any social compact whatsoever, that he who does not comply with its injunctions, must renounce at the same time all the advantages derived from it. On these grounds it is, that the right of excommunication appertains to the Church; and that it possesses the privilege of depriving any of its members of all, or part of the spiritual or ecclesiastical benefits attached to that communion. On this basis the coercive power of the Church rests, and all the ecclesiastical penalties and censures, that constitute its executive and coercive authority, have the same foundation.

60. In the same manner as a distinction is usually made between the *internal* and *external* jurisdiction of the Church, so also ought simple *penances* to be separated from *ecclesiastical penalties* or *censures*.

Chap. II.

To whom does the Supreme Ecclesiastical Power belong?

61. The supreme ecclesiastical power originally appertained to all the apostles, and, consequently, it now belongs to all the bishops, who are their legitimate successors (§ 47).

62. It is necessary to observe, however, on this occasion, that the bishops are the successors of the apostles in that part of their power only, which is necessary for the preservation of the Church; nor must it be imagined that they can claim that other part which was particularly assigned to the apostles, as witnesses to the resurrection, and as men expressly elected to be the first preachers of the gospel. Neither have they succeeded, for example, to the extraordinary gifts of the Holy Spirit, that were immediately communicated to the apostles themselves.

63. Jesus Christ, it must be acknowledged, made a marked distinction in favour of St. Peter, and constituted him the first of the apostles. The gospels, when they mention St. Peter, always designate him as the first. When ecclesiastical matters were debated in common among them, such as the election of a new apostle in

the room of Judas *, or whether converted Pagans ought to conform or not to the Jewish ceremonies †, Peter spoke first, and pronounced the decision of the assembly.

64. The power of the bishops is, therefore, originally of divine institution, as well as the apostolical power and character‡. All the bishops equally acquire, by means of their consecration, the full and indivisible power, both of ordination and jurisdiction, without its being in the power of those who elect, confirm, or consecrate them, to take off the smallest particle from their authority.

65. The following are the only differences to be observed between the apostles and the bishops their successors:

i. That the apostles were selected by God himself, and endowed with extraordinary gifts of the Holy Spirit, as the necessities of that period required; whereas, on the contrary, the bishops are elected by men, confirmed and consecrated by

* Acts, ch. iv. v. 15.

† Acts xv. v. 7.

‡ Episcopi positi sunt a Spiritu Sancto regere ecclesiam Dei.—Acts xx. v. 28.

In the early ages of the church, the terms of Sovereign Pontiff (Pontifex Maximus), of High Priest (Summus Sacerdos), of Pope and Vicar of Jesus Christ, were given indiscriminately to other bishops besides the bishop of Rome.—Bingham. Orig. Eccles. vol. i. lib. ii. cap. 2.

other bishops, that is, according to the ancient practice, by the metropolitan, and the provincial Council, and in the modern mode, by the Pope;

ii. That the apostles exercised, as a matter of right, their jurisdiction throughout the whole world, and on the contrary the power of the bishops, since the circumscription of dioceses, is more confined, and is regularly restrained to their own particular dioceses.

66. The bishop of Rome is entitled to be considered as the successor of St. Peter, in the primacy, because St. Peter actually presided over the Roman Church.

67. The primacy was instituted for the preservation of the unity of the Church. As the bishop of Rome is the centre of unity, it is necessary that each bishop should keep up an epistolary commerce with him, and communicate various intelligence about ecclesiastical affairs. In the Council of assembled bishops the Pope presides, and regulates the order of the usual transactions; and in the absence of the Council, he is bound to administer matters according to their united intentions, and as the vicar of all, to ordain, in a provisional manner, whatever is deemed to be necessary. This primacy is not only a prerogative of honour, but is also a primacy of *authority*, for the purpose of administer-

ing the affairs of the Church; and it is, besides, a primacy of *jurisdiction* necessary to give proper support to the same authority.

68. The form of the ecclesiastical government is, therefore, established in the following manner. The supreme power of the Church appertains to the whole body of the bishops, who may be considered either *universally*, or in their *single* capacity. Under the former point of view, all the bishops assembled in a Council, or considered separately, constitute the supreme Senate of the Church, of which the primate, that is, the bishop of Rome, is president, subject, however, as is every other member of the Council, to the whole college. Every bishop, taken singly, since the circumscription of dioceses, exercises his ecclesiastical power in his own diocese only. It has been already observed that, originally, every bishop exerted his authority, without any local restriction; and in case of necessity, such a privilege may be put in force in these days, excepting always the canonical obedience which the bishops owe to the united college, or to the Roman pontiff in matters appertaining to his jurisdiction as primate.

69. By what has been now said concerning the form of the ecclesiastical government, it is easy to conceive in what sense the bishops ought to be considered as equal among themselves, as

several of the Fathers of the Church have asserted and maintained.

70. The proposition, that the supreme power of the Church appertains to the college of bishops, and not to the Sovereign Pontiff alone, is proved—

i. By the Holy Scriptures *;

ii. By several instances recorded in Church history, when many of the most ancient bishops opposed the decrees of the Popes, whether they related to discipline, or even faith itself, and awaited the judgment of the universal Church, without, at the same time, incurring the imputation of being heretics or schismatics†;

iii. By General Councils; for many acts of these Councils make it evident that questions of faith which had been previously determined by the Roman Pontiffs were submitted to a fresh discussion in the General Councils; and that all ecclesiastical matters, whatever might have been the

* Acts xv. 2, 6, 7, 13, 20, 22, 23, 25.

† Among these bishops we mention Polycrates of Ephesus, with the Asiatic bishops, about the close of the second century, at the period of the dispute with Victor, the Pontiff of Rome, about the time of celebrating Easter.—Cyprian, bishop of Carthage, with those of Africa; Dionysius of Alexandria, with the Egyptian bishops; and Firmilianus of Cesarea, with the Asiatic bishops, on the occasion of the controversy, which arose about the third century, with Pope Stephen, whether it was necessary to re-baptise heretics; and the sixth council of Carthage, in the year 418, when a dispute was held with Pope Zosimus, and his successor.

decisions of the Popes, were definitely terminated in the General Councils.—The following are a few examples :

The heresy of Nestorius, which was condemned by Celestine I., was submitted to the decision of the General Council of Ephesus, in the year 431 ;

The heresy of Eutyches was judged by Pope Leo the Great, and afterwards by the Council of Chalcedon, in the year 451 ;

The second Council of Constantinople, held in the year 553, condemned as heretical three certain chapters that had been approved by Pope Vigilius ;

The third Council of Constantinople undertook another examination of the heresy of the Monothelites, and condemned it again, though it had been supported formerly by Pope Honorius, and afterwards censured by his successors, Martin and Agathon :

This Council proceeded so far as to pronounce Pope Honorius a heretic ;

The Council of Trent without taking any notice of the decision previously pronounced by Leo X., on the doctrines of Luther, examined them afresh, and condemned them as heretical ;

iv. By the united testimony of all the Fathers of the Church, who hesitate not to affirm that Jesus Christ bestowed the power of the keys on all the

Church—that is, the whole college of the bishops, and not on a single primate *;

v. By the General Council of Constance, session 4 and 5—by that of Basle, in the year 1431, session 2, 3, 12, and 18. It is in all these passages explicitly said, that the Pope himself is obliged to obey the General Council. And on this occasion it was observed, that both these Councils, and particularly that of Basle, till its 25th session, were considered as œcumenical by Popes Martin V., Eugenius IV., and Pius II.

71. The decrees of Constance and Basle were received by the university of Vienna, which, in

* St. Augustin, Epist. 162. in the 31st Sermon, *de Verbo Evan. Joan.*, speaking of the Pelagian heresy, says, "Jam de hac causa duo concilia missa sunt ad Sedem Apostolicam, inde etiam rescripta venerunt, causa finita est." This must be understood with the consent of the Church in general, which consent was manifested in two ways, either by the determinations of the Councils, or the rescripts of the Apostolic See. Pope St. Leo, who had already condemned the heresy of Eutyches, nevertheless addressed himself to the emperor Theodosius, to request him to convoke a General Council, in which the matter should be definitively settled.

He thus expresses himself, (Epist. 25. ad Theod. Imp.) "Generalem Synodum jubeatis in Italiam celebrari, quæ omnes offensiones, ita aut repellat, aut mitiget, ne aliquid sit ultra vel in fide dubium, vel in charitate divisum."

St. Greg. lib. i. epis. 24, ad Joan. Constant., quoted by Gratian, Dist. xv. Can. 2, says: "Sicut sancti Evangelii quatuor libros, sic quatuor concilia suscipere et venerari me fateor—Quintum quoque consilium pariter veneror—Cunctas vero, quas præfata veneranda concilia personas respuunt, respuo, quas venerantur, amplector; quia, dum universali sunt consensu constituta, se, non illa destruit, quisquis præsumit aut solvere quos ligant, aut ligare quos solvunt."

reply to a consultation of the Electors of the Empire, expressed itself in these terms: " Spiritus Sanctus, per organum sacri Concilii Constantiensis, declaravit apertè, talem potestatem habere ecclesiam, et concilium eam repræsentans, super omnem, etiamsi papalis existat dignitatis."

72. It would be in vain to oppose to the determinations of the Councils of Constance and Basle, the Council of Florence, held in the year 1439, and the fifth Council of Lateran.

In the former, it is declared indeed, that the Roman Pontiff is the vicar of Jesus Christ, the head of the Church, the father and teacher of all the Christians, and that to him, in the person of St. Peter, was given the full power to feed, regulate and govern the whole Church. But the original Greek text contains the following clause, which the Greek prelates expressly caused to be inserted, which considerably modifies the general nature of the above terms: " according to " the mode explained in the acts of the œcume- " nical Councils, and in the sacred canons."

73. With respect to the fifth Council of Lateran, the following is the fact. In the acts of this Council a decree of Pope Leo X. was inserted, which repealed the *Pragmatic Sanction* of France, and in this decree it is said incidentally, that the papal authority is superior to a Council.

But it is to be observed, in the first place, that the Council did not even deliberate on this proposition, so far from pronouncing definitively upon it :

ii. An incidental allusion to the decree of the Pope, though introduced for another purpose, into the acts of the Council, cannot properly be viewed as a definitive declaration of the Church :

iii. It is besides not fully ascertained whether the said Council was really œcumenical or not.

74. If the supreme power of the Church appertains to the congregated college of the bishops, and not to a single primate, then the claim of infallibility on the essential points of religion, is, by a parity of reasoning, the peculiar privilege of that college, and not an attribute to be assumed by the primate alone.

75. On all occasions, therefore, when the Pope issues any decrees, respecting matters of faith or morals, such decrees ought to be considered only as provisional. The other bishops have the right of voting on them, though each bishop, taken separately, may be, *generally speaking*, bound to submit to them, till the decision of the universal Church shall be known on the subject. We use the terms, *generally speaking*, because, if any bishop believes that in any decree of the Pope there is a manifest error, he is not only justified,

but is actually bound to refuse to comply with its conditions.

76. Is it possible to believe in the infallibility of the Pope alone, when several points, previously determined by him, have been subsequently submitted to a General Council, as to a superior tribunal? When history moreover furnishes us with the real fact, that Popes have erred in matters of faith? For, undoubtedly Liberius cannot be acquitted on the score of the heresy of Arius, nor can Honorius stand excused on that of the Monothelites.

Chap. III.

Of General Councils.

77. According to the regular practice, it is the primate of the Church who is authorized to summon a General Council. But this privilege does not prevent the Church, that is, the united college of the bishops, to whom the primate himself is subordinate, to convoke themselves spontaneously, if the welfare of the Church requires it, and if the primate refuses to convene them.

78. It is acknowledged that the eight first General Councils were convoked by the emperors

as patrons of the Church, and that emperors, either personally, or by their ambassadors, presided in some of these Councils.

79. The consent of the supreme civil power is besides evidently necessary to the convocation of a Council; for how can the bishops, with any propriety, be present at a Council, if their respective princes should forbid them to attend?

80. As doubts may sometimes exist, whether a Council was really œcumenical, or not, the subsequent acceptance of the decrees of the said Council is one of the best rules to clear up such doubts. For it may have happened that a Council, which was originally a partial one, should subsequently be considered as a General Council in consequence of the posterior acceptance of its decrees.

81. The infallibility of Councils is exclusively restricted to matters of faith, and does not extend to matters of discipline; it prevails in actual and positive determinations, not in incidental mentions, or simple allusions. The pronunciation of an anathema annexed to a decree is not sufficient, for that reason, to render it dogmatical *.

* Many of the decrees of the Council of Trent are not observed in the Greek Church; and with respect to the Gallican Church, many canonical points of discipline, laid down by the said Council, were neither published nor admitted into it.

82. The consent of the Church all over the world, as we have before observed, is equivalent to the declaration of the Church assembled in Council. But the presumed silence of the bishops, or other implied assumptions of consent, are not, of themselves, sufficient. It is necessary that the general consent should be explicit and fully ascertained.

Chap. IV.

Of the Primacy of the Pope.

83. There are some *essential* privileges annexed to the primacy of the Pope, and there are *adventitious* ones, which have an origin purely human, and modern. There are also some *controverted* privileges which have been erroneously assigned to that power, but in which, at the present period, a very great number of enlightened Catholics refuse to acquiesce.

84. The essential privileges of the papal primacy are the following:

i. To preserve the external ecclesiastical communion by means of correspondence, and the usual symbols: The primate of the Church, being the centre of unity, becomes then the

most appropriate and accredited medium of intercourse between all the members of the episcopal body:

This rule, however, admits of an exception. We have examples of some bishops, whom the Roman pontiffs excluded from their communion, and who, however, remained afterwards in the communion of the other bishops, because the latter did not find any good foundation for such an exclusion *;

ii. To convene General Councils, to preside in them either in person, or through the medium of legates—to consent and adhere to the decrees of those Councils, if enacted in his absence—to decide any doubts that may occur on the mode in which Councils should be held, as well as whether a Council be general or not—to promulgate their decrees, and forward their observance. —To all these rights we may also add the practice of giving sanction to Councils, which, however, does not imply that the decrees of any Council borrow their authority from such a sanction, or that no decrees can be enacted without it. As to this matter, we have only to recollect what has

* Pope Stephen abstained from all communion with St. Cyprian, as did Pope Damasus with Miletius of Antioch. Nevertheless, St. Cyprian and Miletius held communion with the other bishops of the Catholic Church.—Vide St. Augustin, in the 5th book de Bap. ch. 22, and St. Basil, in the 525th Epistle to Epiphanius.

been said above, when we spoke of the supreme authority of the Church;

iii. To represent, out of any council, the dispersed Church. This representation is agreeable to the presumed intention and will of the other bishops, to universal tradition, and to the preceding canons. These decrees, however, of the primate are liable to be revoked by the episcopal college, and frequently may be regarded only as provisional. He can, therefore, take informations on the affairs of the Church—have a supreme inspection of it—enforce the observance of the canons—supply the negligences of bishops—enact provisional decrees—judge affairs, either general or particular, but which regard the general state of the Church—send legates, with regard to whom, however, we must advert to what shall be said in the sequel, and now remark, that in the first three centuries of the Church, there had been hardly any examples of them, nor indeed could there be, on account of the position of the Church at that epoch;

iv. A supreme right of devolution, which consists in correcting the faults of bishops, and supplying any deficiency in their conduct. It is even sometimes the duty of simple bishops to do so in case of necessity, that is, when any particular Church happens to be abandoned or neglected;

to the Pope. This practice had been
nforced by the papal reservations, which
l on the occasion of some nominations
ps, made chiefly by those Popes who re-
Avignon.

The translations of bishops from one see
her are expressly prohibited by the
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the See of Rome the entire faculty of
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imperial constitution of the 23rd of
prohibits the Austrian bishops to

* Chap. Unde cleric. in 6.

v. To pass provisional decrees regarding faith; if any new erroneous doctrine should indispensably require it;

vi. To enact decrees of the same kind in order to judge bishops;

vii. To make laws of general discipline, should the wants of the Church require it, which laws, however, can be annulled by a General Council, and refused by each bishop in particular, if he should not look on them as suitable to his Church.

Chap. V.

Of the Growth of the Pope's Authority, and of his Adventitious Rights as Primate.

85. The following are the principal causes of the enormous increase of the Bishop of Rome's authority:

i. Formerly this bishop, as patriarch of all, or of a great part of the East*, exercised some rights, which were afterwards confounded with those of a primate;

ii. Frequently the bishops, in cases of doubt, consulted the Roman pontiff, and thence it followed that the affairs of greater importance which

* Can. 6. of the Council of Nicæa, and Can. 28. of the Council of Chalcedon.

were so frequently laid before him on account of the great confidence placed in him, become by little and little reserved to him alone;

iii. The forged decretals of Isidorus, inserted afterwards in Gratian's collection, reserve all affairs of the highest importance to the Pope. A very extensive privilege of appeal is there established, and it is asserted, that provincial Councils are of no authority, if not permitted, or sanctioned by the Pope. In a word, the principle of the Pope's absolute monarchy is there proclaimed in every page;

iv. Provincial Councils having, subsequently, become very rare, the greatest part of the affairs, which used to be laid before them, were transferred to the Court of Rome;

v. The ecclesiastical discipline having, in the middle ages, suffered a great deal of relaxation on account of the ignorance and negligence of the episcopacy, and the clergy being for the most part given up to simony and profligacy, the Roman Pontiffs found themselves compelled to extend more and more their power and authority.

86. The adventitious rights of the primate, according to the discipline which is now almost generally in force, regarded

i. The bishops personally, that is to say,

their confirmation and consecration, their translation from one see to another, the appointment of their coadjutors, their oath of fidelity, their resignation, and deposition;

ii. The bishoprics, that is, their erection, union, or division;

iii. The appeals to the Court of Rome;

iv. Some other affairs of a more recent discipline, such as canonization and beatification, and finally, the approbation of religious orders.

87. Formerly bishops were confirmed and consecrated by one and the same act. The metropolitan and the bishops of the same province regulated the elections of the clergy and the people. Then they examined whether the person elected possessed all the necessary qualities, in which case they imposed hands on him, that is, they consecrated him, and had he been liable to any canonical impediment, it was their office likewise to grant him a dispensation.

88. But these elections having been very frequently attended with disorders, and the contending parties not being willing to acquiesce in the decision of the metropolitan, but more ready to appeal to the Court of Rome, the final result was, that the confirmation became separated from the consecration, and gradually the right of confirming and consecrating was entirely re-

served to the Pope. This practice had been much enforced by the papal reservations, which occurred on the occasion of some nominations of bishops, made chiefly by those Popes who resided at Avignon.

89. The translations of bishops from one see to another are expressly prohibited by the canons; although the provincial Councils permitted it, as often as the benefit of any particular Church required it. The forged decretals then attributed to the Roman Apostolic See the whole right of granting such permissions.

90. The ancient Church furnishes us with very few examples of any coadjutor to the bishops. But if the case of necessity occurred, it was the prerogative of the metropolitan and the provincial bishops to appoint a coadjutor to the bishop who required him, with the consent, however, of the clergy and the people. The Pope's approval had never been demanded, except when the bishop, to whom the coadjutor was to be given, had at the same time the quality of legate or vicar apostolic. Boniface VIII.* afterwards reserved to the See of Rome the entire faculty of giving coadjutors to the bishops.

91. The imperial constitution of the 23rd of May, 1782, prohibits the Austrian bishops to

* Chap. Unde cleric. in 6.

ask for a coadjutor without the permission of the Government.

92. In the first ages of the Church, the bishops elect, before their consecration, sometimes promised canonical obedience to the metropolitan. But Gregory VII. demanded of the patriarch of Aquileja an oath of fidelity similar to that which a vassal gave to his feudal lord. His successors exacted it afterwards of the metropolitans, in giving them the pallium; next of the bishops of the Roman states; and finally, of all the bishops of Christendom. The form of this oath is to be found in the 4th chap. *de Jurejur.* Clement VIII. made further additions to it, and ordered its insertion in the Roman pontifical.

93. The Austrian government, regarding this form as somewhat prejudicial to the civil authority, issued the imperial constitution of 1st September, 1781, which prescribed, that neither the bishop who was to be consecrated, nor the consecrating bishop, should either take or receive any such ath, but under the following conditions:

i. That the whole form should be understood in he just and original sense of an obedience purely canonical;

ii. That it should be received in such a man ner as not to clash, either with the rights of the Sovereign or the duties of the subject, both of

which the said bishops ought, on this occasion, again to recognise by an oath. An imperial decree of the 16th of September of the following year prescribed, for this end, a form of an oath of fidelity, which the nominated bishops should take, immediately after their nomination, and before the taking of any oath to the Pope. The Austrian government followed, in this respect, the example of the Gallican Church.

94. In the same manner as the confirmation of bishops belonged to the metropolitan, and to the bishops of the same province, so they also, in former days, exercised the faculty of admitting or refusing the resignations of bishops. But in the progress of time, this right, as a cause of higher importance, was also reserved to the Pope*.

95. There is not also the least doubt, but that, in former times, the right of judging bishops, and if occasion required, of deposing them, belonged to provincial Councils †. But the impostor Isidorus failed not to make this another case reserved to the Pope. The Council of Trent appears to have adopted this doctrine ‡.

* Decrees of Alexander III., and of Innocent III., *de translatione episcoporum.*

† Council of Nicæa, Can. 5.

‡ In 34 Sess. chap. 5. *De reformatione.*

96. The right of erecting bishoprics belonged formerly, likewise, to the provincial Councils *, as well as that of reuniting, or dividing them, according as occasion required. The provincial Councils fell into disuse, and then all these rights contributed to increase the number of those of the Court of Rome, independently of any express or written law, and in virtue of a mere practice or usage.

97. In the first ages of the Church, appeals to the Court of Rome were very rare; but by means of Isidorus's forged epistles, a vast field was opened for them. Hence also originated great disputes, which the Council of Trent undertook to decide †.

98. These appeals were restrained by the established Austrian laws, which lay it down as a principle, that, in such cases as they may be permitted, the Court of Rome should judge them by a delegate residing in the country to which the contending parties belong.

99. Before the tenth century, we have no vestige of canonization, or beatification. Popes Alexander III. and Urban VIII. were the first who particularly attributed the exclusive right of canonizing to the Court of Rome.

* Can. 98. of the ecclesiastical African Council, and Can. 7. of the Council of Sardis.

† Sess. 24. chap. 22. *De reformatione.*

In Austria, since the imperial ordonnance of the 30th of September, 1782, no new feast, no new exercise of piety can be introduced without the permission of the Government.

Chap. VI.

Of the Controverted Rights of the Primacy.

100. All the rights which the Holy See had assumed to itself, and which had been so detrimental to bishops, have, for their basis, the false principle of the papal absolute monarchy. And from this principle the following conclusions are generally drawn:

i. That the Pope is bound by no ecclesiastical canon, and consequently should never be brought to account for the exercise of his authority;

ii. That he is the universal bishop, having jurisdiction over the whole world, concurrent with the other bishops;

iii. That the bishops possess their power only as a concession from the Pope; and that, consequently, he can either restrain their authority, or modify it at his pleasure.

101. From the principle that the Pope is not bound by the canons, the supporters of the ultramontane pretensions infer, that he can do what he

pleases, *super et contra jus*,—that his sole will is the law of the Church,—that it is not allowed to entertain the least doubt on the justice of his decrees,—finally, that he is the sole master of the benefices and properties of the Church.

102. Nevertheless all that we have said on the nature and the true form of ecclesiastical government—as well as the examples from ecclesiastical antiquity—and even the oracles of the most ancient Popes *, leaves us not the least doubt that the Roman Pontiff, both for himself and the good administration of ecclesiastical affairs, is also obliged to observe the canons received by the whole church—and that he ought even to manifest respect for the rights which every particular church enjoys, as also for the local usages. It is principally in the defence of the canons, that the Pope ought to use his authority in the ecclesiastical government. The liberties of the Church, says Bossuet †, consist in its being not obliged to obey men, but the canons.

* Celestin. I. said, "Dominentur nobis regulæ, non regulis dominemur: simus subjecti canonibus, qui canonum præcepta servamus". Epist. ad Illyr. Episcop. Pope Zozimus wrote ad Gall. Episc. "Contra statuta patrum concedere aliquid, vel mutare, nec hujus quidem sedis potest auctoritas." Gregory the Great *ad Natal. Salonit.* "Absit hoc a me, ut statuta majorum consacerdotalibus meis, in qualibet ecclesia, infringam, quia mihi injuriam facio, si fratrum meorum jura perturbo".

† *Defens. Decl. Cleri. Gallicani*, lib. ii.

103. The jurisdiction of apostolic nuncios is deduced from the principle, that the Pope has a concurrent authority with all the bishops of Christendom; which principle, however, is quite erroneous, contrary to the old canons, and even to the express declarations of many Popes themselves *. In Austria the jurisdiction of the Pope's nuncios is entirely abolished.

104. The immense number of papal reservations is another consequence of the false principle, that bishops hold their jurisdiction from the Pope, and that, consequently, he can limit their authority at his pleasure.

105. In the number of those papal reservations, we find exemptions; the bestowing of benefices; dispensations; absolution from vows; commutations of pious foundations; absolutions either of sins, or of any censures that may have been incurred; indulgences.

106. The following are the general rules to be observed with regard to the papal reservations:

i. The essential power which Jesus Christ

* The letters of Leo I., of Gregory II., and of other Popes to their apostolic vicars, contain very salutary counsels regarding the limits of their authority. It is a known fact, that Gregory resolutely refused the title of universal bishop: "Si unus universalis est," says he, "restat, ut vos episcopi non sitis:" Epist. 70. lib. 7. "Si sua unicuique episcopo jurisdictio non servatur, quid aliud agitur, nisi ut per nos, per quos ecclesiasticus custodiri debet ordo, confundatur?"

gave to the bishops, as successors of the apostles, cannot be restrained by any human authority;

ii. The exercise of this power can only be restrained occasionally, when the good of the Church requires it, but with the consent of the Church, or of those bishops whom such restrictions might affect;

iii. This restriction should never occur in an arbitrary manner, that is to say, without a just cause, nor should it be perpetually maintained, but only as long as the just cause exists, and the welfare of the Church requires it;

iv. Bishops ought unquestionably to exercise their presumptive rights, whenever the omission of them may be injurious to the Church, or to the salvation of souls, which is the chief law of the Church*;

v. In the latter case, neither prescription, nor any observance that may be contrary to their rights, can be brought in opposition to them;

vi. If bishops should neglect to exercise these rights, then it devolves on the primate to put them in force.

107. It is so true, and so well known at the

* It is, in fact, the opinion of all the canonists, of those even who most strenuously support the papal reservations, that, should access to the Roman Pontiff be intercepted by any circumstance, or should it be very difficult, then all papal reservations cease to have any effect.

Court of Rome, that the papal reservations, which restrain the episcopal authority, are often injurious, that, towards the middle of the tenth century, that Court restored, to some bishops of Germany, many rights of which they had been deprived by means of those reservations, but they were restored under the name of *faculties*, which the Pope granted them. It is probable, that the archbishops of Germany were the first who complained of their authority having been restrained, as well as of the jurisdiction exercised by the apostolic nuncios. Those *faculties* are granted by rescripts of the Roman Datary's-office or the Penitentiary.

108. At first, those *faculties* were twelve in number. But the Roman *curiali* added many more ; for, in adding to the number of *faculties*, they implicilty multiplied the reservations. In the present day, they are twenty-two in number, many of which are superfluous, and indeed injurious to the episcopal dignity.

109. In Austria, the imperial constitution of the 4th of September, 1781, prescribed, that the bishops should exercise all the jurisdiction which Jesus Christ had originally granted them, because it was of paramount importance to civil society. This constitution gave great displeasure to the Court of Rome, and then many and loud complaints

pleases, *super et contra jus*,—that his sole will is the law of the Church,—that it is not allowed to entertain the least doubt on the justice of his decrees,—finally, that he is the sole master of the benefices and properties of the Church.

102. Nevertheless all that we have said on the nature and the true form of ecclesiastical government—as well as the examples from ecclesiastical antiquity—and even the oracles of the most ancient Popes *, leaves us not the least doubt that the Roman Pontiff, both for himself and the good administration of ecclesiastical affairs, is also obliged to observe the canons received by the whole church—and that he ought even to manifest respect for the rights which every particular church enjoys, as also for the local usages. It is principally in the defence of the canons, that the Pope ought to use his authority in the ecclesiastical government. The liberties of the Church, says Bossuet †, consist in its being not obliged to obey men, but the canons.

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† *Defens. Decl. Cleri. Gallicani*, lib. ii.

putes that arose from the abuse of such exemptions. St. Bernard highly disapproved of them. The Council of Trent, in order to rectify the matter in some manner or other, ordered, that the bishops, as delegates of the Holy See, should exercise that authority which they should consider necessary. In Austria, those exemptions are no longer acknowledged since the imperial constitution of the 11th of Sept. 1781.

111. With regard to the collation of benefices, of which the Court of Rome, under different pretexts, and by different manners, made herself mistress, all the papal reservations ceased also in Austria, in consequence of the imperial constitution of the 7th of Oct. 1782.

112. The bishops have the right of dispensing from the canons whenever the just cause presents itself for doing so *. They anciently exercised this right not only with great reserve, but also with timidity. Somewhat diffident of themselves, they consulted the Roman Pontiff, or ordered the different parties personally to address their supplications to him. The example of St. Anselm, archbishop of Canterbury, towards the end of the eleventh century, greatly contributed to induce the world to regard the Pope as the sole deposi-

* This shall be proved hereafter.

arose*. All its remonstrances were, however, unsuccessful until Pope Pius VI. went to Vienna. The Emperor Joseph II., through respect for the Pope, issued another ordonnance in the month of May, 1782, by which he permitted the bishops, who should have any scruple about the exercise of all their primitive rights, to demand, from the Roman Pontiff, the *faculties* which they considered necessary, provided, however, that they be granted for a determinate length of time. Another decree, passed in the month of August of the same year, prescribed, that the concession of such *faculties* should be subject to the *placet royal.*

110. We will now say a few words on each of the papal reservations.

One of them is the exemption granted to some convents, or religious bodies, from any authority of the bishop. This exemption, unknown to antiquity, made its first appearance in the seventh century. History records the innumerable dis-

* It was principally in defence of this constitution, that Kaunitz, the high chancellor of Austria, wrote that famous answer of 19th of October, 1781, to the Pope's nuncio at Vienna, which we have mentioned above in the § 41. In that he maintained that the episcopal rights, then called in question, were for many centuries inseparably attached to the episcopacy, and actually exercised by all bishops; and that his Majesty, by the said constitution, intended only to eradicate an abuse, which had been the source of many questions, and the cause of great annoyance to the individual interests of his subjects.

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* 22. chap. 6., Sess. 26. chap. 4.

tary of this power. Vanespen remarks*, that in no canon is to be found any papal reservation, with regard to dispensations. The Council of Trent† prescribed, that the dispensations granted by the Court of Rome should be examined by the bishop of the applicant before putting them into execution.

113. The imperial constitution of the 4th of September, 1781, ordered the bishops of the Austrian States to grant dispensations, by their own right, for matrimonial disabilities. Another of the 25th of the ensuing October, extended the application of the same ordonnance to all occult or secret disabilities. In the following year, (11th of May, 1782) the Government, in order to appease the scruples of some bishops, allowed them to obtain, if they preferred it, from the Pope, the necessary faculties of dispensing from all disabilities either of consanguinity or affinity within the second degree, provided it should be without distinction of birth or riches, and those faculties should be granted to the said bishops for life.

114. But a new imperial constitution of the 16th of January, 1783, made a complete change in all things regarding marriages. This law restored to the civil authority the whole right of

* P. 2. tit. 14. c. 1. a. 10.
† Sess. 22. cap. 5. *De reformatione.*

regulating marriages, and of enforcing such dispositions on this subject as may be convenient. The § 16. ordered those who should demand dispensations, either from consanguinity or affinity, to obtain the consent of the Government, before applying to the ecclesiastical authority.

115. A subsequent constitution (of the 8th of February, 1790) prescribed, that every bishop should previously declare that he grants dispensation of his own authority, from any disabilities either of consanguinity or affinity, with respect to the sacerdotal benediction to be imparted to the contracting parties; and that the provincial Government, if necessary, should dispense, in the name of the supreme civil authority, as to the contract. If the bishop, however, should deem it necessary to apply for a dispensation to the Pope, then a special permission of the Government must be obtained for that purpose. When this permission is given, it is always on the condition, that the dispensation be gratuitously granted.

As to absolutions from religious vows, it had been prescribed by the imperial constitution of the 25th of January, 1782, that application should be made to the ordinary.

116. The Council of Trent* gave to bishops

* Sess. 22. chap. 6., Sess. 26. chap. 4.

the right of commuting pious foundations, and of reducing or remitting foundation masses, whenever there is a just cause. Urban VIII., in 1625, reserved the latter right to the See of Rome, with respect to the foundation masses posterior to the abovesaid Council. But the imperial constitution of the 28th of October, 1786, directed bishops to exercise, by themselves, the faculties which the Council assigned to them.

117. The Popes have reserved to themselves the faculty of absolving from many sins *. The famous bull, *In Cœna Domini*, contains a great many excommunications and reserved cases†. This bull had never been received in Austria; and an Aulic decree of the 14th of April, 1781, ordered, on the contrary, that all the faculties of dispensing or absolving, which the Pope should grant to bishops, particularly that of absolving from the reserved cases, in the bull *In Cœna Domini*, should be rejected, and considered as void.

118. With regard to indulgences, the follow-

* This species of reservations is so contrary to the discipline of the early ages of the Church, that, until the eleventh century, the absolutions obtained at Rome without the knowledge of the local bishop, were rejected by many Councils, and declared null.—(Conc. Salleguastad, in the year 1023. cap. 15.; Conc. Lemovic. in the year 1034.)

† This bull excommunicates heretics—the appropriators of the goods of the Church,—those who bring ecclesiastics before lay tribunals,—those who lay new imposts, or augment the existing ones, without the special permission of the Holy See, &c.

ing is their origin:—All that belonged to the administration of the sacrament of penance was included within the episcopal jurisdiction. The consequence was, that the bishops, after having enjoined penances, subsequently remitted a part of them, on account of the fervour shown by the penitent, or from some other motives. This species of remission took the name of indulgences. In the middle ages, these indulgences having multiplied, Innocent III., in the fourth Council of Lateran, ordered that indulgences, granted on the occasion of the dedication of a Church, should be limited to one year, and all the others to forty days. The reason alleged was, that he observed himself the same restriction*. Hence arose the opinion, that indulgences more ample were reserved to the Roman Pontiff.

119. In the Austrian States, by the constitution of the 7th of May, 1782, all concessions, regarding indulgences, are to be submitted to the *Placet Royal.*

* Cap. 14. *de Pœnitentia et Remissione.*

Chap. VII.

Of the Cardinals, and their Congregations—Of the Tribunals of the Pope—Of his Apostolical Legates.

120. The title of Cardinal was formerly given to all ministers of the Church; because each of them, being particularly attached to one Church, became then, as it were, its pivot, or, according to the Latin term, *cardo*.

121. After some time, this title was exclusively given to the priests, deacons, and bishops of the suburbs of Rome. These cardinals became afterwards very considerable, because they assumed to themselves the election of the Bishop of Rome, exclusively of the remainder of the clergy, and of the people.

122. The rights of cardinals are different, according as the See of Rome is filled, or vacant. In the first case, they form the Senate, that is, the Pope's grand council. They are presidents, or members of different congregations, or of the tribunals of the Pope. In the fifteenth century, the cardinals first became protectors of crowns and of nations; an institution, which probably originated in the wish, that some

crowns and nations felt of limiting the papal reservations, which then began to be intolerable. They might obtain this purpose more effectually, through the interest of some particular agent among the cardinals, than through any other means.

123. When the pontifical chair is vacant, the cardinals have the political government of Rome. They elect the Pope*. They enjoy great privileges and honours†. The Council of Basle reduced their number to twenty-four, and decreed that they should be elected by a majority of voices in the college of cardinals—that they should be selected from all the provinces of Christendom—and that the choice should fall on the most learned, upright, and intelligent ecclesiastic. But this decree was not observed. Their number was brought to seventy, and are all created by the Pope. A custom, however, has been introduced, by which some monarchs acquired the right of presenting subjects for the Roman purple, and those who are nominated in this way, are called *Crown Cardinals.*

124. The congregation of the cardinals, under the presidency of the Pope, is called the Consis-

* Nicholas II. granted the right of election to cardinal-bishops. Alexander III. extended it to the other cardinals.

† They claim precedence over Princes, equality with Kings, and acknowledge inferiority only to the Pope.—*Note by the Editor.*

tory. The consistories are either public or secret, according to the nature of the affairs to be discussed.

125. The tribunals of the Pope are—the Chancery, the Datary's office, the Penitentiary, and the *Rota*. All apostolic letters and briefs come regularly from the Chancery. The regulations to be observed in the collation of benefices are called the Rules of the Roman Chancery; but out of the Roman Court they are of no authority, except in the countries in which they were admitted. The Datary's office despatches all rescripts for the graces which the Pope grants, out of the consistory, for the external jurisdiction. The Penitentiary despatches all the rescripts regarding the internal tribunal, that is, *forum conscientiæ*. The *Rota* is a tribunal peculiarly judicial.

126. As to the congregations of the cardinals, some of them are permanent, and others instituted merely for the despatch of certain business. The latter are, for the most part, temporary. The following are the permanent congregations:—

i. That of the Cardinals, interpreters of the Council of Trent;

ii. That of the Holy Office, or Inquisition;

iii. That of the Index;

iv. That of the Rites;

v. That of the Bishops and Regulars.

vi. That called *De Propaganda Fide.*

127. The decisions of these congregations have no authority, out of the Roman states, but as far as they were received and duly promulgated.

128. The *Index* of prohibited books is not admitted in Austria, as had been virtually decided by the imperial constitution of the 14th of May, 1781.

129. The Pope's legates are either perpetual and ordinary, or temporary and extraordinary. They are sometimes called Vicars of the Holy See. Some are called Nuncios, and others Legates *a latere.*

130. According to present usage, the rights and duties of these different kinds of legates depend upon the tenour of the apostolic letters nominating them.

If, however, we wish to ascertain precisely, whether the powers given by the Pope to his legates are binding upon others, or not, we must further examine the true nature of the ecclesiastical power,—its relations to the civil power,—the rights of bishops,—in short, all the principles we have hitherto had occasion to bring forward. We must also abide by the general maxim, that the authority of the legates should be restricted,

tory. The consistories are either [illegible] secret, according to the nature of t[illegible] be discussed.

125. The tribunals of the Pope a[illegible] cery, the Datary's office, the P[illegible] the *Rota*. All apostolic letters [illegible] regularly from the Chancery. T[illegible] be observed in the collatio[illegible] called the Rules of the Roma[illegible] of the Roman Court they [illegible] except in the countries [illegible] admitted. The Datary's [illegible] scripts for the graces whi[illegible] of the consistory, for th[illegible] must be con-
The Penitentiary desp[illegible] regarding the internal [illegible] matter of order or *conscientiæ*. The *Ro*[illegible] immediately from God, judicial. [illegible] particular Church

126. As to the co[illegible] origin (§§ 64 some of them are [illegible] tuted merely for th[illegible] the Church in their The latter are, fo[illegible] cases (§ 104); following are th[illegible] bishop are recipro-

i. That of t[illegible] other person is allowed Council of Tren[illegible] case of urgent neces-

ii. That of t[illegible] belonging to him; that

iii. That o[illegible] cases simultaneous

iv. That o[illegible] (§ 105):

power of each bishop is not pre-
common to, and inherent in, his
is perpetual;
it extends to all the faithful resident
cese, without exception;
hat it is undivided, and consequently
her hierarchical power, within the diocese
shop, is necessarily subject to it;
That it is complete, and embraces, as
, all ecclesiastical affairs, of whatever nature
y may be;
viii. That it is solely subjected to the ob-
servance of the canons, and of the hierarchical
order.

132. The bishops possess the rights of internal and external government, and perform the functions of the episcopal order.

133. The rights of internal government are:—preaching, the exercise of external worship, and the administration of the sacraments. The bishop, in his diocese, is the person principally charged with the cure of souls. The priests, whose superior he is, are but his associates and coadjutors*. He has consequently the power of administering the sacraments throughout the

* As the bishops are the successors of the apostles, the priests are considered as the successors of the seventy-two disciples, who were commissioned to preach the gospel with the apostles.

whole diocese, and of exercising the entire cure of souls. Ecclesiastical history informs us that, in ancient times, the sacraments were administered solely by the bishop; the priests were only subsidiary to administer them with his permission.

134. The bishop being the usual minister of the sacrament of penance, the regulation of every thing concerning it devolves upon him. It is, therefore, his province to grant *indulgences*, and to reserve to himself the right of granting absolution in certain cases.

135. The Church having the power of making laws (§ 54), every bishop can publish valid constitutions or decrees, whether for the whole of his diocese, or for a part only—accept and promulgate the universal canons of the Church, and dispense with these same canons for just reasons.

136. If there is a question of ecclesiastical rights, or of ecclesiastical offences, every bishop exercises also a judicial power (§ 58), and inflicts upon the delinquents ecclesiastical penalties (§§ 59 and 60.)

137. It is the care of each bishop to preserve the faith, and the ecclesiastical discipline, to watch over the morals of the clergy, such being the objects of the canonical visitations.

138. The bishop is also the collator to eccle-

siastical offices and benefices; and the administration of ecclesiastical property likewise belongs to him.

139. The constitutions or decrees of a bishop may be either upon faith or discipline. They certainly should not be contradictory either to the tradition of the Church, or to the universal ecclesiastical canons.

140. In the Austrian territories, conformably to the imperial decree of the 17th March, 1791, no pastoral letter, or charge addressed to the clergy of a diocese, can be published without the approbation of the Government.

141. The acceptation and promulgation of the decrees of the Councils, and of the rescripts of the Pope, belonging to the bishop, these decrees and rescripts must never be signified either to the inferior clergy, or to the people in a direct manner, but only through the medium of the bishop. It is for him to examine if the canons of discipline are, or are not, suitable to the state of his Church, and to the wants of his people (§§ 82 and 84, No. 7.) It is his duty also to compare the decisions respecting faith, given by the Pope of his own authority, with the tradition of the universal Church (§ 75); which is entirely conformable both to the nature of the ecclesiastical power, and the practice of the ancient Church (§ 70.)

142. The right of the bishop to dispense, for a just cause, any or all of his diocesans with the observance of a law of discipline, is comprised in the power of binding and loosening (*ligandi et solvendi*), which is proper to the Church (§ 25). In fact, the object of the ecclesiastical laws is the good of the Church. This good consists in the care of the salvation of souls. Now, it very often happens, that the relaxation of a law, in peculiar cases, is more advantageous to the salvation of souls, and to the good of the Church, than the observance of the law itself *. As the bishop, in his diocese, has the supreme care of the salvation of souls,—as he is the person also who can, and should be, the best acquainted with the wants of his flock, the right of dispensation necessarily belongs to him.

143. In vain will it be objected, that the subject cannot grant dispensation from the law of his superior. For bishops should not be considered as simple subjects either of the Popes or Councils, but rather as associates in the govern-

* "Quamvis a patribus statuta," says Pope Symmachus, in his epistle to Avitus, Archbishop of Vienna, "diligenti observatione sint custodienda, nihilominus, propter aliquod bonum, de rigore legis aliquid relaxatur, quod et ipsa lex cavisset, si prævidisset; et sæpe crudele easet insistere legi, cum observantia ejus esse præjudiciabilis ecclesiæ videretur, quoniam leges ea intentione latæ sunt, ut proficiant, non ut noceant."

ment of the Church, and in its legislative power. In ecclesiastical antiquities there are indubitable documents of the right of dispensing exercised by the bishops*. We have before said (§ 112) in what light the papal reservation of the right of granting dispensations is to be considered.

144. The bishop should visit his diocese annually. If it be of a great extent, it is sufficient that each part of it be visited, either by himself personally, or by his delegates, at least every two years. The Council of Trent, among other rules laid down touching these visitations, says, that the bishop should exact nothing more than a habitation, and simple and decent food†. The Austrian government went farther. By the decree of the 2nd November, 1784, it ordered, that the parish priest should be informed of the bishop's visit only two, or, at most, three days before; and that neither the bishop, nor the dean, nor any of their suite should receive anything from the parish priest himself, or from the revenues of the Church, with the exception of decent lodging and entertainment proportionate to the pecuniary means of the parish priest.

145. The bishop is the ordinary collator to the

* Thomasini *De Vet. et Nov. Eccl. Discip.*, page 2. lib. 3. cap. 25.

† Sess. 13. cap. 1. *de Ref.*—Sess. 24. cap. 3. *de Ref.*

benefices of his diocese; for anciently this collation was annexed to the ordination of priests. If the benefice to be conferred has a patron, the bishop should invest the person presented by him, after the examination and approbation, which must always previously take place. No person should enjoy any jurisdiction or ecclesiastical office whatever in a diocese, unless he hold it of the bishop of the same diocese. It is also an attribute of the bishop to institute benefices in his diocese, to suppress, to unite, or divide them.

146. The ownership of ecclesiastical property belongs to the Church, that is to say, to the Christian people, for whose advantage that property was bestowed. The bishop presides over the Church and represents it. The right, therefore, of administering ecclesiastical property belongs to the bishop.

147. In fact, in the first ages of the Church, the bishops administered it, either by themselves, or by stewards nominated by them, and employed the revenues in the maintenance of the clergy, and of the poor, and in building or repairing the churches *.

148. In those early times, the different churches, situated in the same diocese, were all maintained

* Canons Apost. 31, Conc. Antioch. can. 25; Gangrens. can. 7; Conc. Chalced. can. 26.

by the mother church; that is to say, the cathedral church. Subsequently, each individual church began to make use of its own property, and the priests officiating in it administered this property exclusively. But the supreme power of superintending the administration of this property always remained with the bishop.

149. According to the laws of Austria, the civil power, in virtue of its right of protection, directs also the administration of ecclesiastical property. It is, however, ordered by the decree of the 23rd February, 1793, that the governments of the provinces should consult the respective bishops about all the law-suits concerning the properties of the churches. There exist also, in Austria, chests called *religious funds* *, the administration of which is not intrusted to the bishops. The latter, notwithstanding, by the decree of the 17th March, 1791, are allowed to inspect the accounts, and inquire into the amount of pensions and salaries, and other details of this kind.

150. The rights of the bishops are likewise duties. For the rights are not conferred upon them for their own advantage, but for the welfare of the Church. They are, therefore, obliged to exercise them; and, for that purpose, to

* We reserve for another publication, should it take place, further remarks upon these *religious funds*.

reside in their dioceses, and to reside actively, that is to say, scrupulously fulfilling their duties.

151. Conformably to the spirit of the Church, the desire of domineering should be foreign to its pastors (§ 51.) According to this maxim, the ancient canons forbade the bishops to perform anything of great importance, without the advice of their presbytery, that is, of the priests of the diocese. Such is the origin of the diocesan synods. The Council of Trent prescribed, that they should assemble every year. They are, however, almost fallen into disuse; but they have, in some degree, been replaced by the cathedral chapters and episcopal consistories.

CHAP. IX.

Of the Coadjutors and Vicars of the Bishops.

152. THERE are different kinds of these coadjutors and vicars, with different appellations;—bishops *in partibus;* coadjutors of the bishops; archpresbyters; deans; archdeacons; officials, or vicars-general; foreign vicars; episcopal consistories.

153. The bishops *in partibus,* that is to say,

in partibus infidelium, are bishops nominated to the sees of countries now submitted to the Turks or other infidels. As to the order, they are true bishops; they can perform the episcopal functions; they are sometimes very serviceable to the bishops having dioceses; but they cannot exercise such of the episcopal rights as belong to any particular diocese, except by delegation of the local bishop.

154. For the purpose of establishing the rights of the coadjutors of the bishops, the motives for which they have been nominated must be considered, as well as the tenour of the apostolic letters constituting them such.

155. The archpresbyters and the deans have a district containing a certain number of parishes, over which they exercise a certain authority or superintendence. The deans of some places, for instance, instal parish priests, newly appointed to parishes within the jurisdiction of their deanery.

156. The decree of the Austrian government of the 2nd of November, 1784, fixed the tax to be paid for the installation of a parish priest by his dean, at a certain piece of gold.

157. An Austrian law has rendered these deans useful in another manner. It has intrusted to them the presidentship of the elementary schools, with the title of *district inspectors*.

They are nominated by the bishop, and confirmed by the provincial government. It is their duty to visit yearly all the schools of their district, and for their travelling expenses they are allowed a sum of five florins upon the property of all churches having the charge of souls. The proctors of the churches must transmit this sum to the episcopal consistories, who give it to the deans, upon their presenting the report of their visitation. These regulations are contained in various imperial decrees, especially those of the 20th of October, 1803, and 7th of April, 1806.

158. In conformity with a decree of the 22nd of June, 1797, the bishops are to make known to the Government the vicars-general elected by them, and submit these elections to its approbation.

159. The office of *vicar-general*, in the Austrian dioceses, is supplied by an episcopal council, in some places called *episcopal consistory*, in others *vicarship, office, officiality, ecclesiastical council.* It is composed of the canons of the cathedral, and other councillors chosen by the bishop. The whole of this council possesses only a consulting voice, the authority residing in the bishop alone.

Chap. X.

Of the Chapters of the Cathedral Churches.

160. In the ancient Church, when a bishopric became vacant, the clergy and the people elected the successor. In several countries the chapters of cathedral churches—in others, the temporal Sovereigns appropriated the right to themselves.

161. In Austria, with the exception of the archbishop of Olmutz, who is elected by the chapter, all the other bishops are nominated by the emperor.

162. Every chapter can make its own statutes. But in order to render them obligatory on the successors of the canons, these statutes must, in the Austrian dominions, besides the sanction of the bishop, be approved by the civil government.

163. In Austria, likewise, there is no chapter exempt from the episcopal jurisdiction.

164. One of the canons is there the superior prefect of the elementary schools.

165. Titular canons have been established there—eight in the metropolitan churches, six in the cathedrals, for the purpose of rewarding with these titles, and the decoration of the chapter, the

parish priests or chaplains who have exercised their offices ten years, and made themselves deserving of this distinction. Each bishop presents them to the nomination of the emperor.—Decree of December 8, 1788.

166. In the metropolitan, or cathedral churches, there are some canons nominated by the bishop, others by the chapter, and others again by the emperor himself.

167. If the emperor does not nominate to all the canonships, he has, however, prescribed rules to be observed in these nominations. The imperial decree of the 22nd of October, 1783, provides that the canonship of a cathedral church should only be conferred upon him who has fulfilled the duties of a parish priest with great credit for ten years.

Another decree, of the 16th August, 1805, renders eligible to the canonships such secular priests, professors of theology in some imperial university or lyceum, as had also exercised for ten years their duties with credit to themselves. This eligibility was extended to the directors of episcopal seminaries.

168. The number of the canons cannot exceed twelve in the metropolitan churches, and eight in the cathedral ones, dignitaries included.—Decree of the 2nd of February, 1787.

169. The civil government removed some abuses which had prevailed in the chapters—such as that which, in certain places, deprived the canon, for the first year, of a part of the produce of his canonship; or that of being obliged to give a dinner; or, instead of it, to pay a certain sum. These abuses were abolished everywhere, in virtue of the decree of the 16th of August, 1787.

Chap. XI.

Of the Generals and Provincials of the Religious Orders.

170. The generals of religious orders preside over their respective orders, in every part of the world where there exist members of those orders. The provincials preside over them only in a determinate province. Both of these dignitaries enjoy an almost episcopal jurisdiction over the individuals of the order.

171. The imperial decree of the 24th of March, 1781, has entirely cut the connexion of the convents of religious orders, existing in the Austrian territory, with the generals abroad, except as to what concerns *suffrages* and *instances* *. A later

* Suffrages are prayers: what is meant by *instances*, I know not; I have translated the word literally from the Italian text.

constitution (of the 2nd of April, 1802,) substituted the bishops to the generals of these orders, as to all the authority which belonged to the former.

Chap. XII.

Of the Parish Priests, or Curés.

172. One of the principal rights, and one of the principal duties of the parish priests is preaching. Monks have not the right of preaching. They possess it precariously, and for the purpose of assisting the parish priest,—not of thwarting and annoying him. There can be no prescription against this rule.

173. Parish priests have received from the civil authority other rights, and other duties have been enforced upon them.

By the Sovereign's concession, they administer the property of the church intrusted to them, which they must, however, do, informing the lay steward of the Church of their management. They have the direction of the elementary schools of the parish, and a superiority over the schoolmasters. They have the administration of the institution of the poor, and generally the right of promoting all the institutions which the civil laws

have provided for the public welfare. They ought to exhort the people to the observance of the laws. It is especially enjoined that they shall be present at the promulgation of the civil laws, and admonish the people to be also present*. The care of orphans, as well as of illegitimate children, is confided to them†. They must either personally, or through the medium of the schoolmasters, assist the military conscription, and furnish whatever information it is in their power to give from the parish books‡.

174. The fees of the parish priests, which are called surplice fees, are fixed by a civil law.

175. In general the parish priests, in the fulfilment of their duties, must scrupulously observe the orders of the bishop, and the laws of the civil authority.

176. The Austrian laws prescribe that all parochial benefices should be conferred on the more deserving candidate, upon examination.

* Imperial Decree of October 11, 1791.

† Decrees of February 6, 1784; March 17, 1791; March 13, 1807.

‡ Decree of October 25, 1804.

BOOK III.

OF THE EXTERNAL ECCLESIASTICAL PUBLIC LAW.

CHAP. I.

Of the Relations which the Church bears to the State.

177. THE Church and civil society are two moral beings, essentially different as to their origin, the object they have in view, and the means of obtaining that object.

178. The Church is instituted by Jesus Christ, and founded upon revelation. Every civil society acknowledges God for its author, but in this sense only—that it may be rationally asserted that such has been originally the will of God that men, for their own happiness, should unite themselves, and form the various civil societies which we see in the world. But the true origin of civil society is the *compact of union, and submission to a supreme power;* and it is from this compact that all the rights of civil society arise.

179. The object of the Church is virtue and the salvation of souls, which is more dependant upon the internal sentiments of the soul, than upon external actions. Now, as force does not

produce internal sentiments, it follows that the Church, in order to obtain its object, has no other means than instruction, exercises of piety, sometimes the exclusion of contumacious or refractory members from the ecclesiastical communion, (§ 4), and that, in other respects, no right of physical coaction belongs to it (§ 11).

180. The object of civil society is the preservation of public order, and the acquisition of the greatest possible temporal happiness to the individuals composing it. To obtain this object, it solely refers to the external acts, not to the internal sentiments of individuals. By its nature, therefore, the civil power is coactive.

181. The Church and the State are, then, two different societies. Each of them exists by itself. It is consequently a great error, although maintained by several persons *, that these two societies are only one and the same thing.

182. It is, however, true, that the objects of both societies are in nowise contrary to each other; and that, so far from this, they can even wonderfully assist each other. It is equally true, that the means which either society is possessed of, in order to attain its peculiar ends, are in no respect repugnant to each other.

* A German author, Henry Etienne, has endeavoured, amongst others, to defend the unity of the Church and State.

183. The consequences of these principles are, that one of these societies can exist near the other—that both the civil and ecclesiastical powers subsist by themselves, and are independent, which does not, however, mean that these two powers are equal in their rights, since the former are of a different nature from the latter. What is especially true is, that neither power should be molested by the other in the exercise of its respective rights.

184. We have said that these two societies can wonderfully assist each other, which becomes evident if we reflect ever so little upon the intimate connexion which exists between internal sentiments and external actions.

185. The Church can, by its precepts, render citizens more upright, more tranquil, and more obedient to the civil authority, and in this manner be very useful to civil society.

186. The latter can assist the Church as an external society, by causing its assemblies, and the laws of its association, to be respected—by protecting the free exercise of its worship—by contributing directly or indirectly to the temporal support of its ministers.

187. Besides the Catholic Church dispersed through different nations, every State, which admits the Catholic worship (§ 12), has its parti-

cular national Church, which is composed of all the individuals professing this worship in that State. This national Church must then be considered as a moral person, like every other legal association existing in the State. Considered with regard to civil society, that is to say, inasmuch as this society possesses property, and enjoys other civil rights, it is dependent on the State. It is subject to the supreme civil authority, to its laws, and also to its burdens.

188. The State, considered as the State, is not the subject-matter of religion—it is not combined with any religious association or Church (§§ 12 and 187); for, the compact of union and of submission (§ 178) is not grounded on the idea that its subjects should profess any one religion in preference to another. The Sovereign of every State, as well as his subjects, is at liberty to enter, or not, into the society of the Church. It is a purely accidental circumstance, considered relatively to the State, whether all its members, or any part of them, belong to the Church. It follows, therefore, as a necessary conclusion, that *the State is not in the Church*, even though the Sovereign, and all his subjects, should be members of that body. A Sovereign who is a Catholic, has, as a Sovereign, neither more nor less rights than a Sovereign who professes another mode of worship.

189. A further conclusion, deduced from this principle, is, that the Sovereign, although a member of the Church, and, as such, dependent on the Church in sacred affairs, is in no respect its subject, in his capacity of Sovereign of the civil society. The same may be said of the State which is submitted to his sway. The State is completely independent of the Church.

190. It must not, however, be denied, that collisions have arisen, and may again arise, between the State and the Church, from the circumstance that the same individuals are frequently, and at the same time, members of both these bodies. But, considering the actions of individuals as referred to the end of the one, or to the end of the other body, these actions are either *purely ecclesiastical*, *purely civil*, or *mixed*.

191. Many *ecclesiastical* actions have a *mediate* or *immediate* connexion with the end of the State. This connexion is *mediate* when it arises only from the principle, that the end of the Church tends likewise, in a general manner, to attain the end of the State. If the connexion is such only, the actions ought to be considered
clesiastical.
ne way, *civil* actions have either
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to the end of the Church, the action must then be regarded as *purely civil.*

192. We therefore apply the term of *mixed* actions to those which may tend, in an equally *immediate* manner, to both the ends of the State and of the Church.

With regard to the *mixed* actions, it is necessary to make a further distinction relative to the end of the Church. These actions are either *essential* or *accidental.* *Essential* actions are those which are founded in a divine institution, or a divine precept: the others are only *accidental.*

193. From this theory are deducted the most accurate rules for determining the exact boundaries of both these powers. The following are the chief rules:

First rule. The actions which are *purely ecclesiastical* are subject to the ecclesiastical power alone. But the latter, in order to direct these actions, ought to employ no other means than such as are adapted to its power; that is to say, instruction, exercises of piety, and the total or partial exclusion of the refractory from the ecclesiastical communion:

Second rule. Actions *purely civil* belong strictly to the civil power alone, which, by its own jurisdiction, enacts suitable provisions.

Third rule. The *mixed* actions, which can produce separate effects, ecclesiastical and civil, are subjected to the power of the Church as to the ecclesiastical effects, and to the power of the State as to the civil effects:

Fourth rule. With regard to those *mixed* actions, the effects of which, civil and ecclesiastical, can in no manner be separated, it is necessary to make a distinction between the case in which an action of this kind is absolutely *essential* to the end of the Church, and that in which the mixed action is only *accidental* to the same end. If the matter be *essential*, and considered as such by the Church, it is impossible to conceive it really defeating the end of the State (§§ 184, 185, 186). When mankind united in civil society, they could not have renounced those means which are absolutely necessary to the salvation of their souls. The civil power being therefore limited by an implicit exception in the social compact itself, is not authorised to forbid *essential* ecclesiastical actions, nor frame injunctions *essentially* contradictory to the end of the Church:

Fifth rule. As to what regards *accidental* matters, the Church has no power to do, or countenance, any thing which the civil power deems to be pernicious to the State; and of such being the case the civil authority is the sole competent

judge. For as the Church, existing in the State, is subject to the civil authority relatively to the end of the State (§ 187), it necessarily follows that the Church is not allowed, in order to attain its object, to employ any other means than those which are not prejudicial to the State, nor in any way repugnant to its laws.

Some writers have laid it down as a fundamental principle, that the end of the Church, as far more excellent, ought to possess a constant superiority over the end of the State. This principle, however, cannot be justly applied, unless with respect to those ecclesiastical matters which are *essential*. With regard to indifferent matters, the end of the Church is not frustrated, as other means exist of attaining the same end, which are admitted by the civil laws. It would even be prejudicial to the end of the Church itself, to employ means which the Church, on the one side, considers as indifferent, and the State, on the other, deems dangerous, and as such, forbids That would be a direct infringement of the laws of the State, and, at the same time, a violation of the precepts of the Christian religion. Nevertheless, the civil authority, to which it belongs to judge whether and how far a matter may be injurious to the State, ought also to pay attention to the utility of the Church, and never to lose

sight of the consideration, that the good of the Church frequently contributes to the welfare of the State:

Sixth rule. Such actions as are *purely ecclesiastical,* and which have only a *mediate* tendency to the end of the State, ought not, under the pretence of the good of the State, to be withdrawn from the jurisdiction of the Church. The civil authority should not assume to determine on matters of this nature, except with the reservation of the rights of the ecclesiastical power, and in due conformity with the judgment of the Church. For, as these actions do not contribute to the end of the State, except as far as they promote the end of the Church, it is just to relinquish to the ecclesiastical power the decision of what is conducive, or not, to its peculiar end. It is one thing to protect the Church and assist it in employing suitable means for its end, and it is another thing to establish, directly and solely, these means by the enactments of laws.

Nevertheless, it is necessary, in this respect, to distinguish the universal Church from its ecclesiastical rectors, individually considered. For if the civil authority perceives that the judgment of these ecclesiastical superiors is in evident opposition to the true doctrine, to the canons and customs of the universal Church, it will then

be incumbent on it to abide, in preference, by the judgment of the universal Church:

Seventh rule. Actions *purely civil* are subject only to the civil authority, even when they have a *mediate* relation to the end of the Church, that is to say, inasmuch as the welfare of the State can contribute to the good of the Church. The civil authority is unquestionably the sole competent judge respecting what conduces to the welfare of the State; and although the observance of the civil laws is also a conscientious duty, and serves, in this view, to promote the end of the Church, yet it cannot be called in doubt that the civil authority alone can enact the civil laws:

Eighth rule. If either of these powers passes its just limits, the civil power defends itself against the Church, thus transgressing its boundaries, even by coercive physical means, if milder modes are found insufficient, and moreover prudence advises so to do:

Ninth rule. The Church, by the very nature of its power, has no other means of defence against the civil power violating its rights, than exhortations and prayers, and, in extreme cases, the exclusion from the ecclesiastical communion.

Chapter II.

Of the Rights of the Church considered relatively to the State.

194. It is necessary to distinguish between the real rights of the Church, that is to say, the rights which appertain to it by the nature of ecclesiastical society, and the rights which have been erroneously attributed to it, as well as those which have been granted to it by the civil power.

195. By some the Roman Pontiff has been elevated to the character of king of kings, and considered as having a direct power upon temporal matters. Cardinal Bellarmine has refuted, by very conclusive arguments, a doctrine so very insulting and detrimental to the civil authority. Subsequently, however, and with great inconsistency, he proceeded to attribute to the Pope, as head of the Church, in the dominions of Catholic potentates, an indirect authority over temporal matters, "because," said he, "the Church and the State form, in this case, but one Christian Commonwealth." He maintains, that this authority of the Pope regards all civil affairs somewhat connected with the spiritual end of the Church, and that the more or less of this connexion is the very standard of the said authority. "In

virtue of this," subjoins this writer, "the Pope can depose the kings, who, either by heresy, or other great offence, inflict detriment on the Church, or hinder the salvation of souls. He has, likewise, the power of releasing the subjects from their allegiance and subjection to those kings."

196. All these propositions are totally repugnant to the true principles concerning the nature and limits of both these powers (§§ 177, 178, 179, 188, and 189.) They are also adverse to the very clear testimony of the gospel itself, to the doctrines of the Fathers of the Church, and even to the practice of ecclesiastical antiquity *.

197. In the Holy Scriptures nothing is absolutely to be found, intimating that Jesus Christ has bestowed on the Church founded by him any power whatsoever, either direct or indirect, over temporal affairs, nor has, in the least degree, retrenched any thing from the civil power, which, at the period of the foundation of the Church, existed as sovereign and independent. What is more, the contrary is fully proved by a multitude of passages in the Holy Scriptures †.

* Bossuet, in the work entitled *Defensio Declarationis Cleri Gall.* lib. 1. sess. 2., Dupin *De Ant. Eccles. Discip.* diss. viii., the anonymous author *De Potest. Eccl. et temp.* prop. I., Nat. Alex. diss. 2. in Hist. Eccles. sect. 11. et 12. treat amply of this subject.

† "Render unto Cæsar the things which are Cæsar's, and unto God, the things that are God's."—Matt. xxii. 21. "My kingdom

198. The Fathers of the Church, likewise, with an unanimous voice, declare that the princes of the earth are independent. St. Ambrose thus wrote to Auxence. "Being compelled, I was not able to resist; I may complain, I may weep, I may groan; against the arms of the Goths, and their soldiers, my tears are also arms. But in any other manner I am unable to oppose any resistance"!

199. If we have recourse to the ancient Church for examples, we shall find that the Christians, being persecuted by many of the Roman heathen emperors, by Julian the Apostate, and the Emperors Constantius and Valens on the side of the Arians, though they were not deficient in point of force, as Tertullian as-

is not of this world."—John xviii. 36. When Christ foretold to his disciples the persecutions which they were to undergo for his sake, he, at the same time, enjoined them by no means to oppose any force to these persecutions, but only patience. "In your patience possess ye your souls."—Matt. x. 18—23. Luke xxi. 13—19. The apostles instruct us, "that every soul is subject unto the higher powers, not only for wrath, but also for conscience' sake; that there is no power but of God; and whosoever resisteth the power, resisteth the ordinance of God; and they that resist, shall receive to themselves damnation."—Ad Rom. xiii. 1—7. "Submit yourselves to every ordinance of man, for the Lord's sake: whether it be to the king, as supreme; or unto governors, as unto them that are sent by him, for so is the will of God."—1 Pet. ii. v. 13, 14. "Servants, be subject to your masters with all fear; not only to the good and gentle, but also to the froward; for this is thankworthy, if a man for conscience toward God endure grief, suffering wrongfully."—Ibid. v. 18—21.

sures us *, suffered intolerable grievances, rather than withdraw their allegiance on the score of religious persecution.

200. Pope Gregory VII. first attempted to usurp the civil power; he took measures to depose the emperor, Henry IV.—an enterprise, however, which several contemporary bishops, and other persons, distinguished for learning and piety, loudly condemned.

201. We may, therefore, maintain it as an undisputed principle, that the Church has no power over actions purely civil,—that if the Church occasionally passed decrees on the subject of contracts, prescription, or other matters of that description, such arrangements had no force except by the consent of the civil power—in short, that the State can, at its pleasure, repeal or alter them †.

202. Still, however, it is not to be denied, that all human actions, even those purely civil, are subject to the moral law, and that it lies within the province of the Church to give explanations of that law. But, as the legality, or illegality of several actions, and consequently their morality, depends on the provisions of the civil law, the latter is equally obligatory on the Church, if no clear and positive divine precept contradicts

* In Apol. c. 38. † See note, p. 22, § 41.

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the good and gentle, but also to the
worthy, if a man for conscience towar
wrongfully."—Ibid. v. 18—21.

negligence of a lay-judge in distributing justice ought to be supplied or repressed by the superior civil authority, not by the ecclesiastical power, which has no concern in it; and as for the *guardianship of distressed persons*, it is a duty of the Church to assist them by means adapted to the nature of ecclesiastical power, and which are in its hands; that is, by exhortations, intercessions, almsgiving, &c.

206. In a similar manner, the coercive power of the Church cannot extend itself to civil penalties (§§ 58 and 59), and, therefore, ecclesiastical censures themselves can have no civil effect, but what is allowed or assented to by the supreme civil authority.

207. In the Austrian dominions, according to the law of the 17th June, 1775, no excommunication of an Austrian subject can take place without the consent of the Sovereign; and for this purpose, the cause of excommunication ought to be discussed by a board composed of an equal number of ecclesiastical and civil commissioners. The ordinary shall then pronounce judgment; but this judgment cannot be published, until it has been submitted to the Sovereign, and confirmed by his *placet royal.*

208. Ecclesiastics are also prohibited from imposing external and public penances, without the

advantages of society, should not be subject to the same public burthens?

214. The Christian religion is so far from justifying the pretension of depriving Cæsar of his due, that it binds the consciences of all the subjects in clear and explicit terms, to render to Cæsar what belongs to him, and especially speaks of tributes: "Render, therefore, to all their due; tribute to whom tribute is due; custom to whom custom *."

215. In the Austrian States no exemption from taxes exists, in favour either of Churches or of the possessors of Church property. All the subjects are bound to pay the same taxes, and take share in the same public burthens.

216. In like manner the *local immunity*, or right of an ecclesiastical asylum, is derived from the indulgence of the temporal sovereigns. For what else is this local immunity or asylum but a sort of grace imparted to criminals, which consists in not dragging them from the temples, or other consecrated places, where they have sought refuge? Certainly the right of grace, be it absolute or temporary, from corporal penalties, belongs to the civil authority alone.

217. The origin of this indulgence can be

* Ad Rom. xiii. 7.

traced to the interposition of the bishops, in order to afford time to the criminals who had taken refuge in the churches, to do penance, and atone for their guilt. The Christian Emperors occasionally enlarged, or restrained this immunity, at their own discretion. But in consequence of the forged decretals, causes arising from asylums were transferred to the ecclesiastical tribunals.

218. In Austria, these local immunities underwent several limitations by means of a law, passed the 16th of August, 1775.

219. The genuine rights of the Church, with reference to the State, are the following :—

Right to civil protection ;

Right to prevent the civil power from causing any prejudice to the faculty, or rather to the obligation, which the Church has of promoting the salvation of the faithful.

The Church, as a society existing in the State, recognised and approved by the State, has a claim on the protection of the civil power. It is, therefore, entitled to *liberty of action—security and protection*—and to *a righteous administration of justice.*

The Church requires *liberty* for the exercise of religion, and for the use of such matters as are *essential* to it, or at least indifferent, or, in other terms, not prejudicial to the State—and

this is termed *liberty of conscience.* Mankind, when they submitted to the restraints of civil society, neither could nor would renounce this liberty.

It requires *security and protection,* not only of person, but also of property, because the acquisition of property, as well as the enjoyment of it, are rights recognised by the civil laws.

Finally, it requires a *righteous administration of justice,* which is necessary to preserve its rights, even its *ecclesiastical ones,* to which either the parties themselves, that is, the members of the Church, or other persons strangers to the society, might attempt to do any injury. If, however, these rights are purely spiritual, the civil judge ought to estimate them correctly, according to the nature of ecclesiastical laws and principles.

220. As the ecclesiastical power exists by itself, and independently, it is easy to perceive that it has a right to *prevent* the civil power from doing any detriment to its interests. This right, however, can be exercised in no way, but what is suitable to the ecclesiastical power, that is to say, by means of exhortations, prayers, patience, and constancy, in suffering, in the name of God, the rigours of adversity with fortitude.

221. It does not result, then, from the rights

hitherto explained, that the Church is justified in pretending to submit to its inspection, either the civil laws intended to be promulgated by the Sovereign, or other civil matters, with the view of ascertaining whether its own rights are compromised, or not, by such laws, or such acts. Neither would it be reasonable to conclude, that a sort of *placet ecclesiastic* should be allowed to the Church, similar to the *placet royal*, which is required previously to the execution of several ecclesiastical decrees, or other acts of the Church. The reason of the difference is, that the Church is in the State, and, in consequence, subject to the laws of the State; while, on the contrary, the State is not in the Church (§§ 187, 188, 189). The right of *supreme inspection* assigned to the civil power is founded on the primitive compact of union and submission, from which civil society arose. But it does not appear, that any right of ecclesiastical inspection over the State was ever granted to the Church by Jesus Christ, who was the founder of it.

222. The fulfilment of civil duties, and the care of advancing the welfare of the State, is a precept of the Christian religion; therefore, in observing it, the end of the Church is also partly attained. The consequence of this principle is, that the Church has *a right to advance the welfare*

of the State, but only by means adapted to the nature of the ecclesiastical power, that is to say, by instruction, and exercises of piety. Not only has the Church this power, but it is likewise a duty incumbent on it, either by reason of the precept already alleged, or by the consideration that the Church is a society contained in the State. The above-mentioned right may, perhaps, be properly termed a right of *protection* with respect to the State, such as we have before mentioned to belong to the State, towards the Church. There is, notwithstanding, always an essential difference between these two rights. The State possesses, besides, the right of directing ecclesiastical matters to the benefit of civil society, as far as can so be done, without encroaching either on the liberty of conscience, or on the ecclesiastical power in its legitimate province. But a similar right with regard to civil affairs can by no means be claimed by the Church. We have before stated the reason of this distinction (§§ 220, 221).

223. The Church possesses the same jurisdiction over a Catholic Sovereign, as over any Catholic subject whatsoever. To him it preaches likewise the divine word; him it judges in the sacrament of penance, and exhorts to amend his ways, and be converted, if he has given any

scandal by his conduct. But the purely spiritual power of the Church can never extend its prerogative so far, as to exact of the Sovereign an account of civil affairs, nor pretend to decide on what the Sovereign ought to do, or not to do, in his capacity of head of the State. For the precepts of politics, or the art of governing the people, make no part of the Christian doctrine, and the Sovereign, as such, does not act like a private citizen. He acts in the name of the civil society, that is to say, of the State, and represents the general will of the citizens.

224. The example of St. Gregory the Great is very remarkable in this respect. The Emperor Maurice had passed a law which this pontiff considered to be prejudicial to the Church. The latter, however, thought himself obliged to publish it instantly, since the Emperor had so ordered, and after having obeyed, he entreated the Emperor to repeal this law*.

225. A Catholic Sovereign can, therefore, be submitted to the censures of the Church, and even be excluded from the communion of the faithful. But in the first place, that ought never to be done for causes purely civil, as the direc-

* "Utrobique ergo, quod debui, exsolvi, qui et imperatori obedientiam præbui, et pro Deo, quod sensi, minimè tacui." Lib. ii. Epist. 62. ad Maurit.

tion and determination of such affairs do not belong to the Church; and, on the other hand, the ecclesiastical censures can only reach him as a private man, and not as head of the State, since, in that capacity, he is not a member of the Church.

Secondly. As the censures of the Church ought not, generally, to have any other civil effects than those which are allowed by the civil power (§§ 206, 207), so much the less can similar effects be attributed to those censures which should affect the person of the sovereign.

Thirdly. The case may seldom occur, that it should be prudent to excommunicate the Sovereign of any State*. History informs us, that these excommunications are always attended with scandals, schisms, and many other circumstances calamitous to the Church itself.

* St. Augustine says: "Quando ita cujusque crimen notum est omnibus, et omnibus execrabile apparet, ut vel nullos prorsus, vel non tales habeat defensores, per quos possit schisma contingere, non dormiat severitas disciplinæ. Neque enim potest esse salubris a multis correptio, nisi cum sociam non habet multitudinem: cum vero idem morbus plurimos occupaverit, nihil aliud bonis restat, quam dolor et gemitus." Lib. iii. cont. Epis. Parmen.

Chapter III.

hts of the State considered relatively to the Church.

HE State has no peculiar and direct right red matters, either by the compact of d submission to the sovereign power, or ncession made by the founder of the . By the social compact, indeed, the s did not intend to confer any other power state but what is indispensable to the end civil society, which is the security and de- of the rights of every citizen. In matters rning conscience and religion, the citizens neither the inclination nor the power to re- nce their natural liberty. With respect to the der of the Church, we have already observed t the power of the keys, and the right of bind- and loosing, were imparted to the apostles, t to the temporal princes.

227. The latter possess, however, a right of uperior *inspection* over all the societies existing n the State. The founder of the Church, by ordering to render to Cæsar the rights of Cæsar, did not, certainly, intend to limit these very rights. Consequently, the Sovereign of every

tion and determination of such [illegible] to the affairs long to the Church; and, on t[illegible] of *crimina*- ecclesiastical censures can c[illegible] in the same private man, and not as hea[illegible] respect to every in that capacity, he is [illegible] entitled to de- Church.

Secondly. As the censu[illegible] prohibit whatever not, generally, to have a[illegible] Church a matter those which are allow[illegible] considered, on (§§ 206, 207), so much[illegible] detrimental to be attributed to the[illegible] affect the person of t[illegible]

Thirdly. The cas[illegible] the Christian should be prudent[illegible] also highly useful reign of any State[illegible] society (§§ 184, these excommuni[illegible] right to the end, with scandals, sch[illegible]ns. Hence the stances calamitou[illegible] ect ecclesiastical [illegible]. when it can [illegible], that is to say, [illegible] the liberty of [illegible] privileges of the [illegible] *supreme right* [illegible] authorised to [illegible] such ecclesias- [illegible] Church it- [illegible], or do not [illegible] Sixth rule) *.

[illegible] infra.

* St. Augustine say
omnibus, et omnibus
non tales habeat defe
non dormiat severitas
a multis correptio, ni
vero idem morbus plu
quam dolor et gemitus.

the right of *examination*—the right —and the right of *protection*, which explained, arise all the particular hich the Sovereign is entitled to exer- espect to sacred matters. These pri- late to, i. The ecclesiastical power a general sense; ii. The exercise of iii. Ecclesiastical persons; iv. and he possessions of the Church.

Of the rights concerning the ecclesiastical in a general sense, the first is that which med the *placet royal*, derived directly from ight of *examination*, and that of *prevention*. is right consists in demanding that every clesiastical decree should, before publication, e exhibited to the civil authority—and in for- bidding its publication, if any thing be discovered in it indifferent to the Church, but which might be prejudicial to the State (§ 221).

231. This right is not confined solely to decrees of discipline, but extends likewise to dogmatical decrees, because a case may easily occur, that into a dogmatical definition something not dogmatical might have found its way; such as, for example, the mode of promulgating the said definition, the mode of execution, and the penal sanction, &c.

232. Several edicts of Ferdinand III. and Leopold I. prove that the Sovereigns of Austria had,

for a long period of time, exercised this right. The more recent decrees of 12th Sept. 1767, 20th March, 1781, and 17th March, 1791, direct that the original of a rescript of the Pope, as well as the authentic copy of it, when it is to be put in force, should be presented to the government of the province in which that document is to operate—that this government, and the fisc-royal, shall give their opinions on it—finally, that the said original and the said copy should be transmitted to the supreme court. But all these prescriptions are not confined only to recent bulls, briefs, and other papal constitutions, but also to those of more ancient date, whenever the application of them to the present circumstances is intended. Besides, even those bulls, briefs, and apostolical constitutions, which had been admitted before, have no obligatory effect, but as far and as long as no recent laws have been enacted to annul them.

233. The law which required the necessity of the *placet royal* for the provisions of Rome,* was published afresh Nov. 7, 1794, on the occasion of the papal bull against the synod of Pistoie.

234. The laws of Hungary declare null all the

* There is no exception but in favour of rescripts of absolution, from the Roman penitentiary, if they regard conscience alone, if the affair allows of no delay, and if the character of any person may be prejudiced by the publication.—Decree, 23rd July, 1782.

papal constitutions and letters which are not confirmed by the *placet royal.*

235. We observed above (§ 140), that every *mandamus* of the bishops ought to be submitted to the approbation of the provincial political government before publication; and we quoted, for this purpose, the imperial decree of the 17th of March, 1791. But it is proper to add to that decree, two others, on the same subject, which bear the dates of 20th February, 1782, and 1st April, 1784.

236. From the rights of *examination and prevention* proceeds the other of diminishing the intercourse of the National Church, with foreign Churches, because this intercourse is not essential to the constitution of the Church, and consequently it ought to undergo such revisal as the safety and utility of the State require. The Sovereign is, therefore, entitled to forbid his subjects to apply to Rome, when there is a question of ecclesiastical matters originally within the competence of the bishops; and if recourse to Rome is necessary, only to permit it with those restrictions which he may judge expedient (§ 112, and the following.) He is competent to abolish the exemptions of the regulars, and to cut their connexions with the foreign generals of the religious orders (§ 110). He can also, if the good of the State requires it, and if he is not bound by any

for a long period of time, exerci[illegible] his
The more recent decrees of 12th [illegible] of
March, 1781, and 17th March, [illegible] to
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the province in which that[illegible] person is
rate—that this governme[illegible] ecclesi-
shall give their opinic[illegible] of do-
the said original and t[illegible] postolic,
transmitted to the supr[illegible] permission
prescriptions are not c[illegible] it is also
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tion of them to t[illegible] importance,
intended. Beside[illegible] affairs, the
apostolical consti[illegible] for several
ted before, have[illegible] subjects,
and as long as [illegible] scription of dio-
to annul them.

233. The la[illegible] amount of the
the *placet roy*[illegible] therefore, by his
published a fr[illegible] can assume the
of the papal [illegible] and parishes, as

234. The [illegible] ys with a reserva-
[illegible] Church—and he can

* There is no [illegible] diction shall be
from the Roma[illegible] the clergy, conform-
the affair allows [illegible]
be prejudiced by [illegible]

sion which he has established. erors frequently exercised this bishoprics, and created new pa- ling to the exigencies of the state. h respect to the legates, whom the the Church, that is, the Pope, may epresent him (§ 84), we have already that their power ought to be confined the same limits as those of the primate , and be submitted to such modifications, rights of the princes, the privileges of the ops, and the legitimate customs of the country uld require (§§ 129, 130). But, as it may ppen that these legates might transgress the undaries of their jurisdiction, either arbitrarily, r in consequence of a mandamus repugnant to the authority of the prince, to the tranquillity of his dominions, or to the liberty of the particular churches; and as the case may equally occur, that the person of the legate himself might not be agreeable, or even be objectionable—the Sovereign, in all these cases, ought to possess the privilege of refusing such individuals appointed to this office, as are displeasing to him, as well as of examining the letters of their commission, before they are admitted; and, after having been admitted, of watching their conduct, of bringing

them back to their duty, if necessary, and even of ordering them to quit the territory, if that measure seems to him indispensable.

240. When any society whatsoever is admitted into the State, its members have a right to the protection of the State, in order to enforce the observance of the conventions, and all the conditions of the society. If any member be injured in his rights, and, on the other hand, the directors of the society refuse to do him justice, the injured member may apply to the Sovereign, asking the redress of his grievances, and administration of justice. The Sovereign, however, ought to grant it in a manner suitable to the nature of the society itself. On this principle are grounded the applications known under the various denominations of a *recourse to the prince* —*appeal* ab abusu, &c. They are substantially complaints addressed to the prince, or to his tribunals, against the decisions of ecclesiastical superiors, when there is reason to believe that they have misapplied their powers.

241. In the early ages of the Church, applications of this description frequently occurred. St. Athanasius, bishop of Alexandria, condemned by the council of Tyre, implored the aid of the Emperor Constantine. In the same way, St.

Chrysostom, patriarch of Constantinople, unjustly reprobated by the synod of the oak, petitioned the Emperor Arcadius for his protection.

242. The effects of a recourse to the prince are of a different nature, according to the variety of the circumstances under consideration. If the question should occur on the defence of civil rights, or the adoption of measures concerning the public tranquillity, the welfare of the State, or the maintenance of the liberties of the country, certainly it then belongs to the Sovereign, or to his magistrates, to pronounce upon the merits of these matters. But were the question to turn on purely ecclesiastical matters, the application to the prince should only be admitted, when it is averred that the ecclesiastical judge has somewhat violently injured the applicant, in not following the legal rules in his proceedings. What is the duty of the civil judge in such a case? He must by no means enter into the merits of the question, but limit himself to constraining the ecclesiastical judge correctly to follow that path which the laws have traced out for him*.

243. The Austrian laws, of the 20th of July, 1782, 11th of April, 1786, and 17th of March, 1791, prescribe that all complaints against ecclesiastical rectors, which relate to matters of

* Van Espen, tract. *De Recursu ad Princ.*

discipline, are to be carried, in the first place, before the episcopal consistory; and, if the consistory become negligent, or commit an act of injustice, then an application to the provincial government is permitted.

244. The rights of Sovereigns, with respect to religious matters, include the following subjects:

i. Instruction in the Christian religion;

ii. The observance of the canons of the Church, and the suppression of abuses;

iii. The accidental rites of religion;

iv. The laws of marriage;

v. Controversies on matters of faith;

vi. Toleration of other religions.

245. The Sovereign, in his capacity of defender of the Christian religion, has undoubtedly the right, and has, at the same time, the duty, of providing that the citizens shall be instructed in the true principles of the Christian doctrine: he is obliged to watch over the prayers of the ministers of religion—the catechism of children in the schools—the instruction of young candidates for holy orders—and, consequently, also the teaching of divinity. He has then, occasionally, both the power and the duty of enacting laws on all these matters, suitable to the nature of the case.

But shall the Sovereign himself have the power

of deciding on religious doctrines? No, certainly: but it is undoubtedly his province to oblige the ministers of religion to discharge their duties, and not to suffer principles to be inculcated contrary either to the purity of the Christian doctrine, as admitted by the universal Church, or to the rights and welfare of the State.

246. Several most salutary laws have been enacted by the rulers of Austria, the object of which is to promote the Christian education of the people, and particularly the instruction of youth. They have also endeavoured to introduce a good system into the schools of Theology. But, even in these plans, proper respect has always been paid to the rights of the bishops, whose duty it is to watch, on their side, over the purity and solidity of the doctrines therein delivered.

247. It likewise lies within the competence of the Sovereign, as the protector of the Church, to inculcate, by every means in his power, the due observance of the canons of the Church. His principal task is to remove all abuses, because they prevent the efficacy of religion in diffusing a benevolent influence over the State.

248. The rulers of Austria, duly renowned for their piety, have issued numerous laws and

regulations on various points of ecclesiastical discipline; such as—the conditions to be accomplished by candidates for holy orders—the collation of benefices—the order of performing the external divine service—the suppression of certain corrupt practices surreptitiously introduced into the ceremonies of worship, &c. The object of these princes was no other than to protect, and cause to be executed, what is more conformable to the true doctrines of the Church, and to the canons*.

249. The accidental rites of religion, as, for example, the great number of holidays, processions, pilgrimages, and nocturnal assemblies, may prove, in one way or another, prejudicial to the State. It is, therefore, a privilege inherent in the Sovereign, by his rights of *examination* and *prevention*, to reduce these arbitrary rites, under a certain regulation, as often as he judges them to be detrimental to the public welfare (§ 227). He possesses even full authority to direct the said rites to the benefit of the state (§ 228); as, for example, to order public prayers on certain occa-

* "In hoc reges, sicut eis divinitus præcipitur, Deo serviunt, in quantum reges sunt, si in suo regno bona jubeant, mala prohibeant, non solum quæ pertinent ad humanam societatem, verum etiam quæ pertinent ad divinam religionem."—St. August. lib. v. contra Crescen. c. 51.

sions, and to promote works of benevolence and piety among the ministers of the Church *.

250. Marriage may be considered in a twofold view;—as a contract, and as a sacrament. As a contract, it has a double relation; that is, to the civil, and to the moral law. The head of the civil society has alone the power of making laws to regulate the civil rights of the citizens, and to decide all controversies arising on these rights. From this principle it follows, that all legal determinations respecting the contract of marriage, solely depend on the civil authority. It belongs to it to prescribe under what conditions the marriage contract can be validly established; and all questions upon the validity of this contract, and on its consequences, should be solved by the civil courts alone. These principles are laid down in the imperial constitution of 16th January, 1783.

251. As far as marriage is connected with the moral law, or is considered as a sacrament, the Church, in its turn, decides; for, undoubtedly, such is its right. Accordingly, in this respect, the Church declares for the *forum conscientiæ*, in what manner marriages, conformably to the

* It is conformable to the precept of St. Paul to cause prayers to be offered up for kings, and for all those who are in authority.—1st ad Timoth. i. 4.

moral doctrines of Christianity, should be celebrated, and what are the reciprocal duties of man and wife. Taking a closer view of the matter, and considering it as a sacrament, it explains the doctrine and the divine precepts relative to it, and informs the faithful in what manner they ought to receive this sacrament *.

* As for the right of establishing matrimonial disabilities, it will be discussed in the second part of this work, if it shall be published, which I am not as yet determined upon. In the mean time it will not be amiss to remark, that, according to the laws of Austria, the same marriage cannot be considered as valid with respect to the ecclesiastical laws, and as null according to the civil laws. Whenever a marriage is null according to the civil laws, then the necessary material of the sacrament is deficient: so that there is no contract, because the civil laws pronounce it null; and no longer any sacrament, because the latter is only an accessary, which cannot exist without the principal. If, on the contrary, the marriage is valid according to the civil laws, since the civil law in Austria refers, for the celebration of marriage, to the ecclesiastical ceremony, the sacrament, as a matter of course, takes place at the same time, and the minister of the Church has no right to refuse it. How preferable is this theory to that delivered by Dr. Doyle, on his examination before the committee of the House of Commons, on the 16th March, 1825, and before that of the Lords on the 21st of the same month! According to this theory it may happen that the same marriage may be valid with respect to the civil law, and null with respect to the ecclesiastical, so that the same children may be reputed legitimate by the civil law, and illegitimate by the Catholic Church. Dr. Doyle considers this distinction as a plain and innoxious one. However, if it is considered that marriage is the union of a man and a woman who are obliged to *cohabit together*, and bound to each other by continual and reciprocal duties, it seems to me that most serious inconveniences must arise, if the civil law says, on one side, to this couple, *You shall live together, and fulfil such and such duties*, while the Catholic priest shall command, on the other side, *Separate from each other; for unless you do so, you will remain in a state of sin, and be damned.*

252. It rarely happens that controversies on disputed dogmas of the different persuasions are attended with any advantage, while they are frequently dangerous to the public tranquillity. It belongs, therefore, to the Sovereign, considered either as protector of the Church, or as defender of the State, to interpose in order to put an end to such disputes. He is authorised either to impose silence on both the parties, or to allow them to have oral discussions within the limits of a reasonable moderation. He is entitled to convene national Councils, and to urge the convocation of œcumenical, or universal Councils (§§ 78, 79).

253. In the time of Charles V. disputes or conferences were held between the Catholic and the Protestant theologians, without producing any good effect.

The imperial decrees of 4th May, 1781, and 11th May, 1782, have forbidden any public disputations on the propositions contained in the bull *Unigenitus*, as well as on the opinions of the Molinists and Jansenists.

254. Religion, abstractedly considered, formed no part of the social compact, nor could the citizens renounce the natural liberty of exercising what form of worship they pleased, provided no detriment should thence arise to the civil commu-

nity. It may be admitted, moreover, that religion is a matter that cannot be forced, because as soon as restraint begins to operate, religion becomes an external hypocritical cloak of faith and piety. It is, therefore, a right of the Sovereign to allow to all his subjects, of different persuasions, the free exercise of their religions, whenever it appears to him that the tenets and ceremonies of any religious form whatsoever are not repugnant to the welfare of the State. This permission has received the term of *civil toleration*, and to regulate the manner and condition of this toleration belongs to the authority of the Sovereign.

255. Again, with respect to *ecclesiastical persons*, it seems clear and reasonable that the Sovereign, by his rights of *inspection* and *protection*, should possess the power of restricting their numbers, if they should increase in a manner injurious to the State—that he should settle the necessary qualities and conditions of candidates for holy orders, their claims to obtain benefices and ecclesiastical employments, with the view that no improper or inefficient ministers should be admitted to the sacred functions. Besides, the great influence which the clergy possess over the people, is a further inducement to the head of the State to devote his attention to this important task, and to exercise his right of

prevention. In short, he has full jurisdiction to compel the ministers of the Church to perform their duties, even by the most rigorous means.

256. On these points the Christian emperors have published a great number of laws which are incorporated into the codes of Theodosius and Justinian; and several others to the same effect have been enacted by the Sovereigns of Austria.

257. The same rights appertain to the Sovereign with respect to the religious orders. He is entitled to permit their existence, or to prohibit them. If he permits them, he can previously arrange the conditions of his permission, and not only on the ground that the existence of every corporation depends on the civil power, but also because these religious vows and the religious tenour of life withdraw from the several duties of the community the subjects devoted to them, and that, during the whole time of their lives.

258. It is a matter of the utmost importance to the State, that the honours and offices of the Church should be conferred exclusively on persons from whose influence the State has nothing to dread, and of whom, on the contrary, it may entertain hopes, that they will exert the influence which they possess over the people, to render individuals more loyal and submissive, to maintain the public peace, and inspire the love of

public and legitimate order. From this principle arises the right, which the Sovereign has, and ought to have, of choice among the candidates for ecclesiastical honours and offices, of excluding those, about whom he entertains just apprehensions that their influence may be injurious to the State, or, at least, that they may not correspond with the reasonable expectations, which society is justified to form with respect to the ministers of religion.

259. We learn from ecclesiastical history, that not only the people, but the Christian princes also, had, in every time, a large share in the ecclesiastical elections, and that the latter appropriated to themselves, on very just grounds, the right of nomination to the Episcopal Sees, as well as to other ecclesiastical benefices, which they founded or endowed. Some Catholic potentates have carried the matter so far as to attribute to themselves the right of excluding individuals, pointed out by them, from the papal dignity.

260. The term of ECCLESIASTICAL PROPERTY is given to every sort of goods destined to the support of the ministers of the Church, the building and repairing of the sacred edifices, and the necessary expenditure for the external rites of worship.

The ownership of these goods belongs to the

congregation of the faithful of any particular church, to the use and advantage of which the founders had devoted these resources. This church then assumes the quality of a moral person, that is always in existence, although the individuals composing it are in a constant and successive change. The administration of this property, unless a different course is traced by the founders, appertains, by the canonical law (§ 195), to the rectors of the church, who lie under a strict obligation to apply the income to the purposes prescribed by the founders.

261. As this property constitutes a part of the territories of the State, and besides the transfer of the private property, thus bequeathed to the Church, cannot break the ties that connect it with the State; it is clear that the Sovereign preserves, over this species of property, the same right which he has over all other kinds of property subject to his sway.

262. The rights of the Sovereign over every species of property within the territory of the State, extend to the income and to the capital equally. He has the authority of assessing taxes on the income; and besides, the right of disposing of the property itself, in cases of public emergency: which right is termed *dominium eminens*. The supreme power has

the same jurisdiction over the properties of the Church.

263. It is moreover analogous to the nature of ecclesiastical possessions, as well as to the original intention of the Church, expressed in the ancient Canons, that Church property should be employed in relieving public distresses, in supporting the poor, and ransoming captives and slaves, and other similar acts of charity*.

264. The property of the Church is similar in its nature to all other kinds of property, which are commonly said to be in a state of wardship. The Church, therefore, possesses the privileges of wards and minors; and, as a further consequence, it becomes the duty of the Sovereign to see that this property shall be administered with fidelity. The mode of its administration likewise emanates from him, and it is equally a duty incumbent on him to watch over the administrators, and oblige them to give an exact account of their management. He is finally bound to act in such a manner as to make the administration conform to the original intention of the founders; and he must forbid the property to be either alienated, mortgaged, pledged, or otherwise

* "Aurum Ecclesia habet, non ut servet, sed ut eroget et subveniat in necessitatibus." St. Ambrose. lib. ii. cap. 28. de Off.—See also the Nov. of Justinian 7. cap. 2. and Causs. xii. q. 2. can. 15.

burthened with debts, without his permission. For this purpose very salutary civil regulations are in force in the dominions of Austria.

265. The general benefit of the State requires, on the other hand, that property should pass from hand to hand by the way of commerce and circulation, and that it should be distributed among the families in the different classes of the citizens. With this view, the Sovereign possesses the right, and has the duty to prohibit, or limit to a certain point, the excessive augmentation of the property of the corporations, called *mortmain*, and to pass laws of *amortissement*. Laws of this description are, since a long time, in full force in Austria; they were enacted by Leopold I., Charles VI., and the Empress Maria Theresa.

Chap. IV.

Of the Reciprocal Relations between the different Persuasions.

266. Every man is born with an inclination to persuade his fellow-men of what he is himself deeply convinced. He frequently even thinks himself bound to act so by the duties of charity, especially when the matter is of considerable importance, and he imagines himself to possess

legitimate means of accomplishing his purpose, and besides, he is of opinion that his labours shall be fruitful. On these grounds, it is an inherent and just wish of the members of the Catholic Church to propagate their religious principles.

267. But faith is not a matter depending on cogent authority, nor has the Church any right to constrain the opinions of men*. Neither frauds, fallacious means, seductions, corruption, nor any other similar tricks are at all allowed, in order to allure people into the bosom of the Church. Besides, it is plain, that such means are insufficient to cause a sincere conviction, nor can they produce any thing but mere external and hypocritical professions of belief, totally repugnant to the laws of morality, as well as to the end of the Church. There remains, therefore, no other mode of propagating the Catholic faith, but instruction, and that instruction conveyed at a proper time and in a proper place.

268. The rules of Christian toleration demand likewise, that we should regard as our neighbours the professors of a different mode of wor-

* "Nova et inaudita est ista prædicatio, quæ verberibus exigit fidem," said St. Gregory, lib. ii. epist. indict. ii., epist. 52 ad Joan. Hierosol.

ship, and that, towards them, we should perform every duty, which the common law of charity requires among men. It is a principle of equity, peculiar to Christian charity, to judge others in the most favourable point of view. We ought always to presume that which is the best, and in consequence abstain from forming a rash judgment on the cause, as well as on the morals of those who have separated from the Roman Catholic Church. This point should be reserved to God, who is the sole scrutinizer of human hearts.

269. The Church must have learned from its divine Founder, that it ought to be obedient to the civil authority; and that this obedience unquestionably extends to every thing not repugnant to the essence of the religion originally founded by Him. The supreme civil authority has, therefore, an unquestionable right to allow to the professors of another religion the free exercise of their own mode of worship. This is called *political toleration* (§ 254). The State can also, by positive enactments, arrange the reciprocal relations and regards to be maintained between the different persuasions, and can finally prohibit certain attempts at proselytism, which it may judge to be injurious to the public tranquillity and to the general welfare of the State.

270. In the dominions of Austria, the passage

from one Christian sect to another also Christian, tolerated by the State, is lawful, but with certain precautions, which have in view to ascertain whether the party, who changes his religion, does so by his free-will, and is duly sensible of what he is doing. It is strictly recommended to the members of different religions, mutually to respect each other, to live in peace and harmony together, and not to molest one another on the score of their respective tenets.

271. The schools are regulated in such a manner, that the youth of the different persuasions have their appropriate modes of instruction as far as regards religious matters, and that they possess, in common, those branches of instruction which are independent of religious belief. All these schools are placed under the inspection of the civil authorities.

272. The religious concerns of the Protestants of Austria are managed by two consistories, instituted and approved by the Sovereign: both of them hold their sittings at Vienna, the one for the confession of Augsbourg, and the other for the reformed Churches of Germany and Bohemia. All the newly-appointed pastors are confirmed by these consistories. Of these pastors, some, under the denomination of elders, are superior to the others. They preside over the assemblies of

one or more provinces. Their rights and duties are regulated by an instruction issued on the 13th of March, 1786. The power of deciding on controverted points of religion is exercised by the political government of each province, which pronounces, after having consulted one or two of the pastors, or theologians. This decision must, of course, be regulated by the principles of the confessions, and is subjected to an appeal to the supreme court sitting at Vienna.

273. Then it is clear, that the external ecclesiastical jurisdiction exercised in Germany over the Protestants, belongs to the Sovereigns of that country, even to those who are Catholics. For, in pursuance to the principles laid down at the peace of Westphalia, such a jurisdiction is considered as a branch of the *right of reformation*, and this right is justly regarded as a natural consequence of territorial superiority.

274. As the Roman Catholic religion predominates in the dominions of Austria, and is professed by the great majority of the population of those states, it enjoys some privileges over the Protestant sects. The places of worship belonging to the Protestants have neither bells, nor steeples, nor a public entrance fronting the squares and streets. The surplice fees, the parochial tithes, and other revenues, arising from

foundations, are reserved for the Catholic parish priests. The registers of baptisms and marriages, as well as those of deaths and burials, are also kept by them. In the case of mixed marriages, if the father is a Catholic, all the children are to be brought up in the Catholic religion—if he is a Protestant, the male children follow the persuasion of the father, and the female that of the mother.

275. The Protestants, on their side, are obliged to manifest respect towards their Catholic fellow-citizens. They ought to abstain from controversial disputes on religious topics in places of public resort *. When the Catholics perform their religious rites in public, or join publicly in prayer, or when the sacrament is carried in procession through the streets, it is the duty of the Protestants either to pass on uncovered, or to stop in a decent attitude, or totally to withdraw from the spot †.

276. The laws of Austria enter into a number of minute details, in order to solve the various doubts which may arise respecting the religion in which children of a tender age ought to be brought up, according to the diversity of the circumstances of the case. The two following maxims are principally kept in view for regu-

* 16th Jan. 1782. † 9th September; 20th Dec. 1783.

lating the decisions on this point:—First, To consider chiefly the greater or less share of discernment in the children themselves; Secondly, To have the utmost regard both to the religion and intention of the parents either living or deceased.

277. With respect to illegitimate children, if the Protestant father declares his title to the child at the moment of baptism, he is then at liberty to bring it up in the tenets of his own religion. If he does not so declare himself on that occasion, the care of the children's education devolves on the Protestant mother. But, if the mother be poor, and unable to defray the expenses of education, and if, consequently, the children be educated at the public expense, they must, in that case, be brought up in the Catholic religion*. The same rule is applied to foundlings, or children exposed in the streets. In the latter case, however, if a citizen takes charge of a foundling, and, looking upon him as his own child, supports him at his own expense, he is then entitled to bring him up in his own religion.

278. The Catholic clergy, in their sermons or other public discourses, are bound to abstain from all insulting or satirical expressions against those who profess another mode of worship†.

* 4th July, 1796. † 2nd Jan. 1782.

foundations, are reserved for the ... iren, priests. The registers of baptis... ission is as well as those of deaths a... hool-room, kept by them. In the case ... d*. if the father is a Catholic, ... the 12th of be brought up in the Cath... ction on the a Protestant, the male ... f parish priests, suasion of the father, a... s into those coun- mother. ...ation is Protestant.

275. The Protest... ...s avocation becomes to manifest respect ...erment to the highest citizens. They ... sial disputes ... ...e country, where the public resort* ... ...rying-ground allotted to their religious ... ...e buried in Catholic church- in prayer, ...manner; that is to say, with- procession ... ...es, or public prayers. The the Protes... ...minister, that belongs to the to stop ... ..., must be invited to accompany draw... ...e is unwilling to do so, it then

27... ...the Catholic parish-priest to of ... ...himself. The Protestants possess d... ...liberty of forming funeral proces- i... ...ringing of the bell, and of keeping ... ...their tombstones, the distinctive ... ...their faith†.

... ...for the marriage of Protestants

... 1782. † 12th Aug. 1782.

published both in the Catholic church of ochial district in which they live, and in own places of worship*.

283. The Protestants are not obliged to contribute either to the reparation or maintenance of the Catholic churches, or to refund to the Catholic parish-priest any extraordinary expenses which he may incur†.

284. In those places where there are Protestant pastors lawfully appointed, it belongs to them to baptise and marry the members of their own communion, and also to perform the funeral service for them. They are, however, under an obligation to give immediate notice of these baptisms, marriages, and deaths to the Catholic parish-priest of the district, that they may be enrolled in the registers, which he is obliged to keep, according to the forms prescribed by the civil laws. The Protestant registers, which contain the same articles, may prove very useful on some occasions‡.

285. If the Protestants have schools of their own, they are then under no obligation to contribute to the support of the Catholic schools§.

286. In places where no regular Protestant

* 9th May, 1784. † 8th Jan. 1784. 22nd May, 1808.
‡ 13th Jan. and 22nd Feb. 1782. 19th July, 1784.
§ 13th May, 1782. 26th July, 1786.

279. With regard to the Protestant
who frequent the Catholic schools, pe
to be given them to retire from the s
when the Catholic catechism is hear
m

280. The Imperial decree of
ro-
November, 1804, lays an injun
aster
bishops to send, in the capacity of
to the
the most intelligent ecclesiastics i
tries where part of the populati
ages, the
Their good conduct in this a
by the Ca-
afterwards a ground of preferm
inister is al-
dignities in the Church.
character of a

281. In those parts of the
Protestants have no buryin
which the Ca-
them, they are to be buried
of a Catholic who
yards, in a simple manner;
the Protestant
out any peculiar rites, or
The priest is
nearest Protestant minist
very clearly, the
same Confession, must b
the laws of toleration,
the corpse. If he is un
regard the educa-
falls to the lot of the
recommend to them
accompany it himself.
regulations ‡.
besides the liberty o
in these mixed
sions, with the tollin
husband or wife, ac-
exhibited, on their
his or her religion,
symbol of their fait
; while the Protestant

282. The bans

* 25th Aug. 17

† 28th September, 1785.

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.tholic, is thereby
to the law of indis-

th May, 1788, has de-
.cting parties, being both
ıe of their marriage, are
and one of them subse-
.e Catholic religion, the di-
hold good.

ıt decrees, however, of 15th
ı 14th January 1803, forbid the
:m the ceremony of marriage be-
olic and a divorced Protestant.

a duty incumbent on every Catholic
st, to be carefully vigilant that the
oleration be accurately observed both
olics and Protestants conjointly—he is
also to conciliate differences, whenever
.rise—to prevent useless disputes—to re-
on proper occasions, all contested matters
.he public authorities for their decision, and,
the same time, to provide them with all the
equisite proofs and documents.

292. If a Protestant is desirous to embrace the Catholic faith, he is not admitted into it till after a previous examination made by the parish

* 17th January, 1787.

priest respecting the degree of information possessed by the applicant, and also with regard to the motives that induce him to change. If the result of this examination is favourable, then the parish-priest is bound to report the matter to his bishop, and solicit his permission on the occasion.

DISSERTATION

ON

THE RIGHTS AND DUTIES

OF THE

ENGLISH GOVERNMENT,

WITH RESPECT TO THE

CATHOLICS OF IRELAND.

DISSERTATION,

&c.

WERE the rights and duties of the English Government with respect to the Catholics of Ireland well ascertained—were those rights exercised—and those duties fulfilled, the question of Catholic Emancipation would, in my opinion, have been long since set at rest; and the United Kingdom of Great Britain and Ireland would have acquired more harmony, more strength, and a degree of prosperity far superior to that which it possesses at present. All those advantages would have been the necessary effect of the pacification of Ireland—beautiful, fertile, and ingenious Ireland.

But do these rights exist? And what are they? If they be proved, the existence of corresponding duties can no longer be doubtful.

Now the rights of every government over every kind of religious establishments existing in the State, have never been called in question, except in these latter times, when, under the pretext of liberty of conscience, it is boldly asserted that government has nothing to do with them, nothing to prescribe, nay, even that it ought to accommo-

date the formalities of civil acts, and of judicial proceedings, to the variable tenets of different persuasions. Allow the sectaries of different persuasions full liberty of action—and I dare affirm, that there is no civil duty, however sacred, which they will not, at one time or another, refuse to fulfil.

In ancient times, the power of the civil authority to superintend or regulate all religious matters, formed part of the public law of every nation,—nor do I here speak of those in which the supreme offices of the chief magistracy and priesthood were vested in the same individual. Several writers have treated upon this subject. Grotius composed a commentary entitled "De imperio summarum potestatum circa sacra." Among the French works, one has struck me as very remarkable: it is called "Traité de l'autorité des Rois sur le gouvernement de l'église *." But those who, in my opinion, have spoken with the greatest perspicuity and solidity upon this subject, are Paley, in his "Principles of Moral and Political Philosophy," and the authors of the "Gius ecclesiastico Austriaco," whence I have extracted "Ca-

* This work is usually attributed to M. Talon, attorney-general to the parliament of Paris. But it has since been ascertained to be a production of M. Mothe le Vayer de Boutigny, who died intendant of Soissons, in 1685.

tholicism in Austria," which precedes this dissertation.

Much has been said about liberty of conscience. It is certainly an important principle. But are human societies wholly, or even partially, governed by abstract and insulated principles? Is there any one more important, or any more generally acknowledged, than the general right to personal liberty, and that slavery ought not to exist? Why then is not freedom immediately given to every slave in the colonies? Liberty of commerce is another great principle. Why then is it still fettered by numerous restrictions? and why, in all probability, will some of these always exist?

The reason is this. In morals, as well as in politics, there are general rules and exceptions. Different principles also must be applied to particular complicated cases; and where there are several principles equally well established, one, among the number, may frequently temper, modify, suspend the operation, or destroy the power of another, even of all the rest, according to their relative importance, or to the more immediate applicability of each to the subject. There is also, very often, the competition of particular and general consequences, whence "arises," says Paley *, "every difficulty in morals, or, what is

* Book vi. chap. x.

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* Book vi. chap. x.

human (§ 14 of the preceding work)*, and referring to the latter the human laws promulgated either by the ecclesiastical, or the civil power, and placing in the first line, among the sources of the *Austrian ecclesiastical law*, the constitutions, decrees, or other orders of the Sovereign, touching publico-ecclesiastical matters (§ 40).

The doctrine of Austria is not at all new. It is well known that several Christian princes not only frequently confirmed the canons of the Church, but that, moreover, in matters of discipline, any way affecting the welfare of civil society, they made laws, which the bishops received as subjects, and faithfully observed. The Theodosian and Justinian codes, and the capitularies of the French kings are full of these provisions (§ 28).

Practice, however, would not sufficiently, perhaps, establish the right, were it not supported by substantial arguments. A very simple one may be adduced, in order to prove, that civil liberty ought to be superior to religious liberty. Civil society belongs to all ages, and to all places —it is founded upon natural law, and it existed long anterior to the establishment of the Christian Church †. This, even such as it is now consti-

* All the §§, which I quote within the parentheses, refer to "Catholicism in Austria."

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jected to the same necessities, as a whole? "Religious liberty," as Paley admirably observes *, "is, like civil liberty, not an immunity from re- "straint, but the being restrained by no law "but what, in a greater degree, conduces to the "public welfare."

If the Catholic religion consisted only of its essential tenets, there would be no reason for fearing that it would exercise a pernicious influence in civil society. It is absurd to suppose that belief in transubstantiation, image worship, the mass, &c., could injure any government, or any public liberties, whatsoever. Mere religious theories, whether indulged in individuals, or shared by a number of persons, not otherwise united in society, can alarm no government. But the case is widely different with religious societies, properly so called, and their acts and practices. For the very reason, that the Catholic Church is an outward and visible society (§ 5), great evils may be introduced into it. In this respect it may be compared to a field sown with good seed, but in which, in the midst of the good corn, tares have sprung up—or to a net cast into the sea, which gathers at once good and bad fish.

Why, then, it may be asked, have persecutions occurred, on account of tenets? Why was belief

* Book vi. chap. x.

in these tenets constituted a bar, separating some from the enjoyment of those political and civil rights, of which others were left in full possession? And why is this bar still preserved?

I reply, that nothing can justify the persecutions which have taken place on account of religious tenets. Those persecutions, however, have long since ceased, and there is every reason to hope that they will not be again renewed. With respect to the oaths, commonly called the *Test oaths*, still administered in the present day, and containing an abjuration of certain tenets, as well as of certain doctrines, formerly attributed to Catholics, but now condemned by the majority of them, such as the Pope's power to depose kings, to release subjects from the oath of allegiance, the non-obligation of keeping promises made to heretics, &c., respecting these oaths, I say, which must be taken by every subject of the United Kingdom, in order to enable him to enjoy all his political and civil rights, a highly important remark must here be made.

It is not so much that the framers of these oaths, as well as the advocates for their being preserved in the present day, imagine that the belief in three or four dogmas, thereby abjured, can be of serious detriment to the State—nor, because they are of opinion that the doctrines

therein condemned, and which, in themselves, may be really mischievous, are still retained and practised by the majority of Catholics; in short, it is not so much the subject-matter of these oaths, which is the cause of alarm—as the admission of Catholics in general to places of authority and power, for several reasons, some of which are independent of the tenets and doctrines before alluded to.

Regarding these same tenets as superstitious, the Protestants certainly consider them as rather prejudicial. Could it, however, be proved that the Catholics would stop here, Protestants would not feel so seriously alarmed as they now do. But seeing, that an infinity of superstitions, both old and new, are prevailing in different Catholic countries, although not the same in every one; that they have been introduced or favoured chiefly by monks, who are regarded as the most active agents of the Court of Rome; that new-fangled objects of devotion are continually devised; that new miracles are frequently proclaimed; that ridiculous customs are revived and every where disseminated; that the credulity and ignorance of the people are converted into a source of profit; and, finally, that great efforts are made to keep up this ignorance and credulity, by opposing the diffusion of sound and useful knowledge, and the best modes of this diffusion,—they fear, not merely

the full revival of a few doctrinal points, regarded by them as superstitious, but the accumulation of those superstitious habits, which, though not essentially inherent in Catholicism, are yet constantly seen to be attached to that worship, wherever the civil authority neglects to prevent or extirpate them.

And with respect to the dangerous doctrines above mentioned, while it is well known to reasonable and unprejudiced Protestants that they are no longer admitted, nay, that they are even condemned by the majority of Catholics, yet, on the other hand, as it is equally well known that they were formerly in high repute, proclaimed, disseminated, and even acted upon for several ages *, and that, even in the present day, they are not completely revoked, nor openly disavowed by General Councils, or by the See of Rome, which, in the absence of Councils, is esteemed by Catholics as the Representative of the universal Church ;—the Protestants seeing also, that, al-

* Every Englishman of the present time reads in the history of his country, that England, as a fief of the Church of Rome, for a long time, paid its tribute; that Popes have arrogated the power of deposing English Sovereigns, witness John, Henry VIII., and Queen Elizabeth; and that the liberties of England narrowly escaped destruction under the Catholic Stuarts. Moreover, in his own times, he has seen Napoleon excommunicated for invading the Roman states. It has been reported that, in very recent times, absolution was given to some princes for oaths taken in favour of constitutions. I cannot, however, vouch for the authenticity of these facts.

though so desirable, no steps are taken to silence those, who, from time to time, again rake them up, nor to condemn their works the instant they appear* ;—seeing, on the contrary, that several of these persons are taken into favour, loaded with honours and rewards, preferred to ecclesiastical dignities, and, in some countries, even to temporal ones † ;—seeing all this, the Protestants, or

* Why has not Rome, so much in the habit of condemning books, included in its famous *Index* the works of Messrs. De Maistre, Bonald, La Mennais, &c.? For some account of these works see the following note.

† Count De Maistre, author of one of the most singular works which has ever appeared, entitled *Le Pape*, in 2 vol.—Father Ventura, *procureur général* of the Théâtins, the translator of M. de Bonald, and commentator upon De Maistre's work.—M. de Bonald himself and the Abbé de la Mennais have filled, and still do fill, important situations. Endowed with talent and abilities, they have become the leaders of a party dispersed all over the globe, under different names, and having for its object the restoration of the Pope's universal monarchy. I shall here give a slight sketch of the characters of these persons, subjoining a few specimens of their doctrines, which, I am certain, are but little known in this country.

Count de Maistre, a native of Savoy, and possessed of considerable erudition, was minister of state in Piedmont, where he also filled *ad interim*, the office of Chancellor, after having represented his Sardinian majesty at the Court of Russia. The Emperor Alexander had desired he might be recalled, on account of his intrigues with the jesuits of St. Petersburg, whom that monarch likewise ordered to quit the capital, at the same time. The influence of this man was extraordinary. His doctrines took more in France than in Italy. Compared with him, the Bonalds and the La Mennais sunk into insignificance. This writer,—will it be credited!—is the eulogist of the Inquisition and of the bull *In Cœna Domini*. He is the enthusiastic admirer of executioners ; he is not only a defender of the infallibility of the Pope, but also attributes the same prerogative to kings, and consequently would invest them with absolute power, provided the

still remain the same; that is, much more numerous than those alluded to in the oath. The oath, therefore, becomes rather a mark of distinction between Catholics and those who are not so, than the repository of all the principles and maxims which distinguish Catholicism from Protestantism. Nor, indeed, could a less equivocal mark have been contrived; for no Catholic can shrink from transubstantiation, the value of the mass, &c.—these admit of no mental reservation or subterfuge whatsoever.

But besides the particular objections alleged by Protestants against the superstitious customs and dangerous doctrines of the Catholics, there are others perhaps more vague and general, but which they urge with still greater force, against Catholicism. They accuse it of intending to overthrow Protestantism, even by violence, should any opportunity offer itself, or might be created by some contrivance—of being the enemy of constitutional governments—and of favouring despotism by every means in its power*. Long after the expulsion of the Stuarts from the throne, the Catholics were generally accused of promoting their interests. Paley† justified the

admitting the Catholics to a seat in Parliament, should the idea of a gradual emancipation, which appears to me the wisest, be approved of.

* See Note page 163. † Book vi. chap. x.

Test oaths upon this ground. Speaking of the exclusion of any dissenters from offices of trust and power, he says, that this exclusion is more easily vindicated in the case " of a country in " which some disaffection to the subsisting go- " vernment happens to be connected with certain " religious distinctions. The State, undoubtedly, " has a right to refuse its power and its con- " fidence to those who seek its destruction. " Wherefore, if the generality of any religious " sect entertain dispositions hostile to the consti- " tution, and if government have no other way of " knowing its enemies than by the religion " which they profess, the professors of that reli- " gion may justly be excluded from offices of " trust and authority. But even here it should " be observed, that it is not against religion that " government shuts its doors ; but against those " political principles, which, however indepen- " dent they may be of any article of religious " faith, the members of that communion are " found in fact to hold. Nor would the legisla- " tor make religious tenets the test of men's in- " clinations towards the State, if he could dis- " cover any other that was equally certain and " notorious.

" Thus, if the members of the Romish Church, " for the most part, adhere to the interests, or

" maintain the right of a foreign pretender to the " crown of these kingdoms; and if there be no " way of distinguishing those who do from those " who do not retain such dangerous prejudices; " government is well warranted in fencing out " the whole sect from situations of trust and " power. But even in this example, it is not to " Popery that the laws object; but to Popery, as " the mark of Jacobitism; an equivocal, indeed, " and fallacious mark, but the best, and perhaps " the only one, that can be devised. But then it " should be remembered, that as the connexion " between Popery and Jacobitism, which is the " sole cause of suspicion, and the sole justifica- " tion of those severe and jealous laws which " have been enacted against the professors of " that religion, was accidental in its origin, so " probably it will be temporary in its duration; " and that these restrictions ought not to continue " one day longer than some visible danger ren- " ders them necessary to the preservation of " public tranquillity.

" After all, it may be asked, why should not " the legislator direct his test against the political " principles themselves, which he wishes to ex- " clude, rather than encounter them through the " medium of religious tenets, the only crime, " and the only danger of which, consist in their

" presumed alliance with the former. Why, for " example, should a man be required to renounce " transubstantiation, before he be admitted to an " office in the State, when it might seem to be " sufficient that he abjure the Pretender? There " are but two answers that can be given to the " objection which this question contains: first, " that it is not opinions which the laws fear, so " much as inclinations; and that political incli- " nations are not so easily detected by the affir- " mation or denial of any abstract proposition in " politics, as by the discovery of the religious " creed with which they are wont to be united :— " secondly, that when men renounce their reli- " gion, they commonly quit all connexion with " the members of the church which they have " left; that church no longer expecting assist- " ance or friendship from them: whereas parti- " cular persons might insinuate themselves into " offices of trust and authority, by subscribing " political assertions, and yet retain their predi- " lection for the interests of the religious sect to " which they continued to belong. By which " means, government would sometimes find, " though it could not accuse the individual, " whom it had received into its service, of dis- " affection to the civil establishment, yet that, " through him, it had communicated the aid and

"influence of a powerful station to a party who "were hostile to the constitution. These an- "swers, however, we propose rather than defend. "The measure certainly cannot be defended at "all, except where the suspected union between "certain obnoxious principles in politics, and "certain tenets in religion, is nearly universal; "in which case, it makes little difference to the "subscriber, whether the test be religious or "political; and the State is somewhat better "secured by the one than the other."

It is impossible to explain in a more sensible manner the intentions of the framers of these oaths, as well as, considering the time in which Paley wrote *, and his being a minister of the Established Church, to do it with greater moderation. My object, in thus bringing forward his opinions, is to show, that the alarm which prevailed at the time when these oaths were prescribed, of the dangerous influence of the Roman Catholic religion upon the civil liberties of England, did not exclusively arise from the tenets and doctrines to be abjured by those oaths, but from many other maxims and pretensions of Catholicism. The danger most dreaded by Paley, in his day, was the existence of the Stuart family.

* Paley was born in 1743, and wrote towards the close of the last century.

This I am not astonished at: this really was the greatest peril of those times; for as to the ascendancy of the Catholic clergy, and the influence of the Court of Rome, they had, at that period, considerably lost ground; the Gallican liberties were firmly and jealously maintained in France; the Jesuits no longer existed; Maria Theresa, Joseph II., and Leopold his brother, had introduced great innovations into their states, and had given, as it were, a new form to the Catholic religion, even to the remodelling, in the greatest part, the *ecclesiastical law*. Paley's opinions would, no doubt, undergo a considerable change in the present day, were he to see what is passing in France, in the Netherlands, in Italy, in Spain, &c., the resurrection of the Jesuits, the power possessed by secret congregations and apostolic juntas, and their intimate connexion with absolute governments—were he to read likewise their periodical publications, as well as their long-winded dissertations, their predictions, and even their views upon England *; part of which

* Count de Maistre, in book i. chap. ix. of his work entitled *Le Pape*, highly applauds a passage quoted by him from a pamphlet, and to which he makes some additions after his own peculiar fashion. The passage runs thus: "The time is come "for undertaking in an occult manner *(sous œuvre)* the resto- "ration of that magnificent edifice (he had previously been "speaking of the colossal hierarchy of Rome) which had been "put down with so much uproar; and the moment is per-

is almost incredible, and the other part lurks behind the curtain, as not yet fit for the light.

Although very favourable, as we have seen, to

" haps arrived for reconducting into the bosom of the Church, the " Greeks, the Lutherans, the ANGLICANS, and the Calvinists. It is " for you, O Roman Pontiff, to show yourself the Father of the faith- " ful, by restoring to religion its magnificence, to the Church its " unity. Those very ENGLISH, who were the first to withdraw from " your authority, are now your most zealous defenders." The Count then remarks, that the author of the pamphlet might reasonably indulge hopes with respect to the English, " WHO MUST," says he, " ACCORDING TO ALL APPEARANCES, BE THE FIRST TO RETURN TO " UNITY." In another place, he shows how essentially the downfal of Protestantism and the ascendancy of Catholicism are connected with the destruction of English liberty, and the triumph of absolute power. In book ii. chap. ii., after having treated, with the utmost contemptuous merriment, all political constitutions, he adds: " It does not " appear, that the numerous attempts made to restrain the sove- " reign authority have ever succeeded in such a manner as to in- " vite an imitation of them. England, favoured by the surround- " ing Ocean, and by a national character, which relishes these ex- " periments, could alone contrive anything of this kind: but her " constitution has not sufficiently undergone the test of time ; and " already this renowned edifice, upon whose pediment we read " MDCLXXXVIII, appears to totter upon its yet uncementing " foundations." Again, speaking, in another place, of the close intimacy of Protestantism with liberty, and of Catholicism with despotism, he explains the reason of this connexion by saying, that Catholicism inculcates that the authority of the Sovereign comes from God—and is, therefore, beyond all human control, and accountable for its acts to God alone ; and that Protestantism, on the contrary, sets out with the principle of the sovereignty of the people, " a dogma," continues he, " which it has carried from re- " ligion into politics." Count de Maistre's remark is so true, that the Austrian government itself, in order to put the liberties of its Catholic national Church upon more solid foundations, sets forth, in its *Austrian Ecclesiastical Law*, the doctrine of the social contract, whence it derives the origin of civil society, and in so doing, appears to renounce the maxim of the divine right of kings.—See §§ 8, 178, 188, and 226 of *Catholicism in Austria*.

the emancipation of the Catholics, Paley nevertheless foresaw, besides the existence of the Stuarts*, the possibility of some new danger, on

* Another passage from Count de Maistre will show the opinion entertained by many persons upon the Continent with respect to the reigning family in England. "What!" exclaims he, in book iii. chap. iv., "what should I be, had one of my ancestors of the third or "fourth degree only, been placed upon the throne by some revolu- "tionary violence! A madman, a fool, who ought to be got rid of at "any rate. Legitimate sovereignty may be counterfeited for some "time; it is likewise susceptible of being more so, or less, or not "at all. If nothing is known about the origin of a sovereignty; if "it has commenced, as it were, of itself, without violence on the one "hand, as without acceptance or deliberation on the other; if, "moreover, the king is European and CATHOLIC, he is, as Homer "says, a king, Βασιλεύτατος. The more he departs from this model, the "less is he a king. Above all, but little value should be set upon races "produced in the midst of turbulent times, raised by violence or po- "licy, and surrounded, flanked, defended, and consecrated by pre- "cious fundamental laws, inscribed upon fine vellum, which have "foreseen all possible cases. Such races cannot last. Many other "things might be added, were we inclined and ALLOWED to say all."

In the above passage, the last expression of which is very remarkable, especially as proceeding from a diplomatic person, subsequently Minister of State, and a great friend of the Jesuits,—in the above passage, I say, the Count does not allude in the least to Napoleon: for, first, none of Napoleon's ancestors had been upon the throne; secondly, this was written in 1817, and, consequently, after the fall of Bonaparte, and during the infirmity of George III., to whom the second period of the said passage seems to refer; thirdly, with respect to Bonaparte, he expresses himself appositely, and without any disguise, in the following words:—"A great and "powerful nation," says he (book ii. chap. ii.), "has covered itself "with ridicule and shame, by placing on the throne a Corsican "*gendarme* instead of a French king. Having afterwards fallen "into the abyss of humiliation, and escaped political annihilation "only by a miracle, which it had no right to expect, it now amuses "itself, under the yoke of foreigners, with reading its charter, &c."

I shall incidentally remark, that the claims of the Stuarts still exist, although the male race of them is extinct, as this circumstance does

account of which this emancipation should still be deferred.

After having firmly established this proposition, which, as I have before said, is of very great importance, viz., that the oaths required to be taken in order to be qualified for all political and civil rights, have, for their sole object, the general exclusion of Catholics from places of trust and power, for reasons even foreign to the substance of the oaths, and that these latter are but a means of surely distinguishing Catholics

not in the least affect the succession to the Crown of England. These claims, whatever they may be (certainly of the same value as those of the last pretenders, the Stuarts), are now going to be transmitted to a branch of the house of Austria, the Duke of Modena having married the eldest daughter of the late king of Sardinia, Victor Emanuel, who left only female issue, and was the eldest descendant, in a right line, of Charles I., by Anne Marie of Orleans, queen of Sardinia, who died in 1728. This princess formally protested against the act of Parliament, which called, to her prejudice, the House of Brunswick to the Crown of Great Britain and Ireland.

Besides this branch of the house of Austria, there are other Catholic families nearer in succession to the Crown of England than the reigning house of Brunswick, but who were likewise set aside by reason of the odium attached to Popery. Should it happen that this religion were imprudently restored, that is to say, without the necessary precautions, these rights, or more properly these pretensions, might again awaken from their long slumber in the event of a disastrous war, an invasion of Ireland, or any similar calamity. Were not the claims of the house of Braganza formerly considered as quite extinct under the powerful Spanish dominion which had united Portugal to Spain? When political liberty is at stake, even by remote, and not very probable contingencies, there can never be too many precautions taken against future chances. Why then should the precautions adopted by the wisdom of former times be either removed, or even impaired, without suitable equivalents, and such as may be productive of general satisfaction?

from those who are not; this proposition being laid down, I shall be asked, if there does really now exist any danger in granting full emancipation to the Roman Catholics? I do not presume to solve this question, but I shall merely offer a few reflections.

In the first place, I make a great distinction between the capacity of being a member of parliament, and all the other political and civil capacities—not indeed, for the happiness of the individuals, with respect to whom I think the difference not so very substantial, as I shall hereafter show; but for the security and welfare of the State at large. My opinion then is, first, that it would be but an act of justice to enable the Catholics to enjoy, as soon as possible, all the other capacities, of which I have just spoken.

But as to their admission into parliament, when I reflect upon what Paley says, book vi., chap. vi., that "there necessarily exists in every go-"vernment a power, from which the constitution "has provided no appeal; and which power, for "that reason, may be termed absolute, omnipo-"tent, uncontrollable, arbitrary, despotic"—that such, consequently, is the English parliament; I foresee the *possibility*, should Catholics be admitted into it, that they would be, for the same reasons, called to the cabinet, as well as re-enabled to succeed to the Crown; that even the

reigning family, or any future king whatsoever would become a Catholic; that the Parliament would be filled with Catholics. These hypotheses may be ridiculed; but when the safety of the State is in question, and when the eye has to survey a long futurity, it is but prudence to anticipate them all. Is a party of enemy's troops, however small, allowed to enter a besieged fortress, especially if it be known that a strong force is without, ready to support those so admitted?

I have said the *possibility*, not the *probability*, much less do I speak of a *proximate probability*. But, I repeat it, all possibilities may, in course of time, become realities. Ascendancy is not always on the side of numbers. Princes might, with great appearance of justice, claim a liberty of conscience, enjoyed by every Englishman but themselves. Why, it might be said, should so odious an exception be maintained against them alone? Besides, after so much experience, both ancient and modern, is it to be overlooked, that there may be, for a future Sovereign, some very attractive temporal motives for embracing the Catholic persuasion? Let us speak sincerely: when we take into account all that a Sovereign, openly or secretly Catholic, could do with Catholic commanders by sea and land, (as it is already allowed to appoint them,) with Catholic ministers, with a House of Lords to be augmented at plea-

sure with Catholics, and with a House of Commons, which, according to its actual composition, may likewise be furnished with a certain number of Catholics—his creatures; let the *possibility* which I merely advance be denied, if it can.

But, it will be said, if the great majority of the nation, if the Parliament representing it, desire to become Catholics, what solid objection can be raised? Who would be entitled to complain? I answer, that it may also happen that Catholicism might obtain an ascendancy, and even a very great ascendancy, without a sincere adherence of the majority of the nation. It is always a few individuals, and sometimes one alone (if he succeed in seizing upon power), who subjugates and draws after him the mass of the people, even in countries the most high-minded and free. The history of every nation, and of England in particular, abounds with examples of this truth. As for myself, I should not have reason to complain of the change; as a Catholic, I should rejoice at it. It would, nevertheless, be my only wish, that the change might take place without the civil and religious liberties sustaining any injury. Is that possible? I answer, positively, in the affirmative. A distinction, however, should be made. If Catholicism were previously cleared from the great many superstitions which have been embodied with it; if it were stripped of

the ultramontane pretensions which have been tacked to it; were it to be restored to its original purity; placed, by wise regulations, under the inspection, protection, and constant vigilance of the civil power; under this supposition, I have no doubt, that it would be reconcileable with the liberties of any country whatsoever*. In the contrary case, I dare not affirm that the said liberties would not run a great risk.

But, to particularize: it appears to me as clear as day, that if the communications of Rome with the Irish Catholics were reduced to what is absolutely indispensable, and yet constantly submitted to the inspection of Government; if a foreign ecclesiastical education were done away with; if the instruction and education of priests were strictly watched and directed by the civil power, simultaneously with the Catholic bishops; if these prelates, and the rest of the clergy, were paid by the State, chosen, or approved by royalty; if monks, and especially Jesuits, were excluded, and no longer tolerated by connivance; in short, if Catholicism were placed upon the same footing as it was in France before the Revolution, or after the Concordat in 1801; or, which would be preferable, were it regulated

* Pius VII., when bishop of Imola, and at the time of the Cisalpine Republic, declared in a homily, that the Catholic religion was even favourable to democracy.

precisely, or nearly so, as in the extended dominions of Austria; then there could be absolutely no cause for alarm.

But, with a Catholicism such as now exists in Ireland; with a foreign influence much greater than is necessary, without any control whatsoever, and this since a very long time; with monks, who keep up a constant foreign correspondence, and who certainly pay more obedience to their foreign superiors than to their bishops; with bishops, and other Church dignitaries, in the selection of whom the Government has no share; with a clergy, which, for its support, depends chiefly upon the lower classes of the people, whom they are consequently obliged to conciliate*; with the pretension of interfering in so

* Paley, after having said (book vi. chap. x.) that it is at all times a bad constitution which presents temptations of interest in opposition to the duties of religion, proceeds to examine the condition of those, who are to perform the ecclesiastical functions, deriving, at the same time, their subsistence from the people. "Preaching, in time," observes he, "would become a mode of begging. "With what sincerity, or with what dignity, can a preacher dispense "the truths of Christianity, whose thoughts are perpetually solicited to the reflection how he may increase his subscription? His "eloquence, if he possess any, resembles rather the exhibition of a "player who is computing the profits of his theatre, than the simplicity of a man, who, feeling himself the awful expectations of "religion, is seeking to bring others to such a sense and understanding of their duty, as may save their souls. Moreover, a little "experience of the disposition of the common people will in every "country inform us, that it is one thing to edify them in Christian "knowledge, and another to gratify their taste for vehement, impassioned oratory; that he, not only whose success, but whose subsistence depends upon collecting and pleasing a crowd, must

many temporal concerns—education, instruction, the reading of books—sometimes exclusively, at other times in conjunction with the government,

" resort to other arts than the acquirement and communication of " sober and profitable instruction. For a preacher to be thus at the " mercy of his audience; to be obliged to adapt his doctrines to the " pleasure of a capricious multitude; to be continually affecting a " style and manner neither natural to him, nor agreeable to his " judgment; to live in constant bondage to tyrannical and insolent " directors; are circumstances so mortifying, not only to the pride " of the human heart, but to the virtuous love of independence, " that they are rarely submitted to without a sacrifice of principle, " and a depravation of character; at least it may be pronounced, " that a ministry so degraded would soon fall into the lowest hands; " for it would be found impossible to engage men of worth and " ability in so precarious and humiliating a profession." I do not pretend to say, that the above observations are strictly applicable to the Catholic clergy of Ireland, of whom I have heard eulogiums rather than censures, especially on the score of disinterestedness. But, in the modern constitution of society, when neither the simplicity of the first ages of Christianity, nor the fervour of those early Christians who lived together as brothers, and even in a community of property, any longer exists, it is impossible but that something of which Paley speaks must also occur in Ireland. To play off miracles; to publish extraordinary favours, obtained by means of some image, or of some religious external performance; to create new modes of devotion; to feed the credulous spirit of the vulgar with superstition, and to overwhelm it to the utmost with spiritual terrors; to extol the marvellous effects of indulgences, corporal penances, offerings to the Church, &c., have always been a source of much emolument to the Catholic clergy. How can poor curates always abstain from such means? — The Austrian system prevents all these abuses. Generally speaking, it does not allow either new indulgences, or new devotions (§§ 119 and 249). It assumes as a basis, that its divine foundation being accomplished, the Church can go on without miracles (§§ 7, 62, 65). On the other hand, however, the Austrian government has provided, that ecclesiastics, especially such as have the cure of souls, shall not be subjected to want; and that, in case of good behaviour, their condition shall be improved.

whose views and principles, however, it does not harmonize with, but, on the contrary, frequently opposes and counteracts, either publicly or secretly, directly or indirectly; with a Catholicism accompanied by all these circumstances, I think I express myself with great moderation when I say, that the civil and religious liberties of England would run a great risk, if, besides the abolition of all the penal statutes, which still fence them round as barriers (however just or unjust in other respects), the Catholics be moreover admitted to have a share in the supreme power residing in the Parliament: such Catholicism, I am afraid, will then be a wedge, by which liberty will be gradually burst asunder, and perhaps, in the end, destroyed.

A crowd of objections will here be raised against what I propose. It will be said, that the doctrines of the Irish Catholics give no reasonable cause for alarm. In proof of which will be adduced the declaration of the Catholic bishops of January 1826; their depositions before the Houses of Parliament; the resistance which they have at times opposed to the pretensions of Rome. It will be added that these pretensions are no longer what they were—that the political institutions of England, and the actual state of knowledge, secure this country from all risk;—moreover, that the restraints upon the exercise of the

Catholic worship, which I have shown above, and drawn from the example of France, or of Austria, are incompatible with the liberty of the country—that it would be monstrous, for instance, to prevent any person from repairing to foreign universities, seminaries, or colleges, for the purposes of instruction—that the government of this country being Protestant, and since a long time hostile to Catholics, it would be very unjust and very hard to place, as it were, the Catholic worship in its hands,—that it cannot be pretended, that a Protestant Sovereign, surrounded by Protestant ministers, should exercise the same rights of patronage, nomination, or inspection as Catholic princes have invested themselves with, or have received from the Church by a concession, either express or tacit. Finally, it will be urged, that the government of this country will be backward in intermeddling in a direct manner, almost daily, in the concerns of a worship foreign to it, and to which it is averse. Such are the principal objections that may be raised against the plan which I conceive to be the only rational one for safely attaining the great object of a definitive and complete emancipation.

My answers can only be brief in reply to objections which, as they fill volumes, would also require volumes to refute them.

I shall commence by observing, that the state of knowledge alone is no security against the invasions of superstitions, and of the extravagant pretensions of the clergy: for the effect of knowledge is slow and feeble, nor does it act upon the great bulk of the population. Besides, interest and power but too often succeed in making it retrograde. I will cite, for instance, France, and some parts of Italy, countries, in which all the sciences, literature and the arts, are on about the same level as in England, but which, notwithstanding, have been, within a few years (the Austrian territories excepted) placed under a species of monkish yoke. But the Austrian dominions furnish another singular observation, viz., that the power of the government, seconded by a small degree of knowledge, or by knowledge less diffused, has obtained such a result, as the great diffusion of knowledge has not elsewhere produced, that is, a pure, innocent, unobtrusive Catholicism—a Catholicism, which, instead of opposing the government, is a support, both to it, and to civil society at large—and this Austria has accomplished by mild and reasonable means, that is to say, by wise laws. Of this an opinion may be formed by the accompanying work. What are we to conclude from this great example—from this experiment made upon so ex-

tensive a scale as those vast regions (composed too of different nations) subject to the Austrian sceptre? We are forced to confess, that, to render Catholicism such as the civil power may have nothing to fear, is not the task of knowledge alone, but of knowledge and of government conjointly, and still more of the latter.

The English institutions, it is true, are great securities. They ought not, however, to be deteriorated, which, in my opinion, might be the case, if, without preparation, and without the necessary precautions, admission into Parliament should be granted to the Catholics. Is it not a common saying (although, for reasons which shall hereafter be given, not a correct one), that the English government is essentially Protestant? Then you will destroy its essence, by rendering it in part Catholic; that is, if you render it so, blindly, and without the preparations and precautions I have already described. Would this be the first time that the liberties of England have been obscured, or have disappeared?

It is not my wish to detract, in the smallest degree, from the merit of that resistance which the Roman Catholic Church of Ireland has occasionally opposed to the mandates, or to the pretensions of the Papal Court. Neither am I desirous of raising doubts as to the sentiments expressed by them,

either in their depositions before the committees of Parliament, or in their writings *. But, independently of every other observation, I maintain, that all that is here urged, is not of a nature calculated entirely to remove all apprehensions with respect to the encroachments of Roman Catholicism, when it is notorious that a great part of the Catholics of other countries, with whom those of Ireland are in constant communication, entertain other sentiments, preach and inculcate other doctrines, and that these very sentiments and doctrines are especially professed in the centre of Roman Catholicism, by its principal personages, and by the numerous agents of the Court of Rome, spread abroad in every direction; when it is not certain that all the clergy of a diocese think upon the ecclesiastical matters in which government is interested, in the same manner as their pastor, and that the contrary is almost certain with respect to the monks; and when finally there is no assurance, that, were the Roman

* Some persons have pretended to discover contradictions between what bishop Doyle deposed before the Committees of Parliament, and what he had previously written. Others have asserted that this bishop, together wit archbishop Murray, in the depositions contained in the *Appendix to the Report upon Education*, have affirmed that the provisions of the ancient Councils relative to heretics were examples which might be followed, if there existed governments and circumstances precisely similar to the governments and circumstances unde which those provisions were made.

Pontiff to *issue his dictum*, the present bishops would not make a recantation, at least on their deathbed, as did several bishops, who signed, with Bossuet, the celebrated declaration of the French clergy in 1682 *—as did the German prelate, who, under the name of *Febronius*, in the middle of the last century, wrote so freely upon the government of the Church of Rome—as did the bishop of Pistoja—as did, very recently, in obedience to the injunctions of the Court of Rome, after the fall of Napoleon, a multitude of French and Italian prelates, whole chapters of cathedral churches, and even some princes of the Roman Church—facts which it would be too long and too painful to particularize. For it is proper

* It is a fact, that Louis XIV. himself, towards the latter part of his life, wrote a letter to the Pope, in which he promised to revoke the royal edict, which gave a sanction to the declaration of the clergy. But the parliaments which would, no doubt, have made a remonstrance, inspired some degree of awe. The letter was forgotten, and the edict remained in full vigour. Subsequently the parliaments caused it to be put in execution with great severity, pronouncing judgments upon *appeals of abuses*, suppressing the charges of archbishops and bishops, and causing them sometimes to be burnt by the hands of the executioner: which proves the necessity not only of precise laws against the usurpations of Catholicism in temporalities, but also of a constant vigilance of authority to cause them to be executed. But why do I speak of the recantation of a king, and of some bishops only, when we have even that of a Pope, and one of the most renowned, both for learning and erudition? Æneas Sylvius Piccolomini, at the Council of Basle, had combatted the pretensions of the Court of Rome with great vigour. Having become Pope, under the title of Pius II., he adopted and maintained them all with the utmost zeal.

to observe that Rome is at times silent, long-suffering, and truckling; but when circumstances change in her favour, she again exalts her head, and again advances her pretensions, which she never renounces, or at least scarcely ever, in a formal manner. The Bourbons of France, of Spain, and of Naples, are, each of them, addressed by her in a different language. She has another for Austria: she had a different one for Napoleon. *Apparently*, Rome has but a slight connexion with Ireland, and does not, ostensibly at least, meddle too much in her affairs. She is even asserted to have made some explanations favourable to the civil power. In the formula of the oath taken by the bishops to the Pope, at the time of their consecration, she has suppressed the words "*hereticos persequar et impugnabo.*" All this, however, does not prove, that after the emancipation is granted, unless it be preceded by measures which will render it innoxious, and unless those very measures be tried for some time—all this, I repeat, does not prove that, after the emancipation is granted, Rome will not raise her voice, and will not condemn in great part what the bishops have said. Had not brevity been my intention, I would here point out what it is that she would probably condemn.

As I am firmly persuaded that, upon the

emancipation being granted without any precautions, and without a previous trial of them, the language of Rome, and consequently with it that of the clergy of Ireland, would change, so I am also much inclined to believe, that the Catholic question, instead of being at rest, as so many persons imagine, would then be revived in a different manner, but with much more ardour, having a starting point still more favourable, and that a fresh field of claims would open to view —claims, of which not a word is heard at present, at least distinctly. These claims will be brought forward as the *necessary consequences of the emancipation granted*. Nations, like individuals, being naturally fond of repose after a protracted struggle, are inclined sometimes, from mere lassitude, to grant long-withheld concessions, and to believe that these concessions will put an end to every grievance, and afford an efficient remedy for the calamities they have suffered. But imprudence is always followed by repentance, and by an increase of evils, when the concessions are not well digested, nor all their consequences foreseen and duly estimated. The return of the emigrants into France, for instance, was just; and at first they appeared completely satisfied. Now, the first appointments, a thousand millions of francs, and every kind of favours, can scarcely

stop their complaints. What limits are there now to the demands of the French clergy? I am well aware of the reasons of dissimilitude which may be urged. But I beg my readers to reflect if there be no analogy. I think I recollect having read in some of those numerous writings published upon the Catholic question, that further views already animated some among the zealous partisans of Catholic emancipation—views which they imprudently betrayed, when they imagined they already held in their hands the act of their emancipation. Already, it might be said, they dictated the conditions: loudly they exclaimed, that they would not accept it unless it were full, unconditional, and in every respect unqualified *.

I feel regret in being obliged, in confirmation of what I have advanced, to give some proofs of the ultramontane pretensions still existing, but which lie concealed till a favourable opportunity for bringing them forward shall present itself. To produce these proofs, however, is necessary, in order to prevent mistrust. Besides, Roman Catholicism (I must be allowed to say so) is a thing scarcely understood in England in the present day; and yet it should be so fully and

* See the note, page 195.

[redacted] is bull, which was
[redacted] at Rome on Holy
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[redacted] raking up grievances,
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[redacted] . I shall adduce a still
[redacted] my reader's attention
[redacted] between the Courts
[redacted] dated February 16,
[redacted] the *Roman Catholic*
[redacted] *on in the kingdom of*
[redacted] ust be inferred the
[redacted] *The Roman Ca-*
[redacted] *ll be maintained in*
[redacted] *belonging to it, in*
[redacted] *canonical sanctions:*
[redacted] ll the pretensions,
[redacted] the Court of Rome
[redacted] d. Speaking of the
[redacted] opricks, Art. IV. pro-
[redacted] *hall make these endow-*
[redacted] *King*. Here the Pope

completely, in order to avoid the falling into serious and sometimes irretrievable errors.

If priests and their partisans be only listened to, they will tell you,—that there cannot exist a divided allegiance and obedience towards two powers, spiritual and temporal—that it should be entire towards the Sovereign in temporal matters, and entire towards the Pope in spiritual ones. Can there be a clearer principle, they will say? But proceed to the practical application of these principles, and it will then be seen what disputes will arise! As to the term *temporal*, its meaning varies among these different parties. One of them represents everything as spiritual: ecclesiastical property is spiritual; ecclesiastical persons are spiritual also: hence immunities, both personal and real; hence also the jurisdiction of the Church in civil and criminal matters. In marriage, the sacrament ought to be principally considered; from which it is inferred, that marriage should be regulated by ecclesiastical laws. Finally, every human act may be the subject matter of a sin: there are divine precepts and ecclesiastical laws for every matter: thus the aim of priests is to make themselves masters of everything, when they can. The Bull *In cœna Domini** contains a series of the most absurd pre-

* See the note in Art. 117 of *Catholicism in Austria*.

tensions. The reading of this bull, which was usually performed every year at Rome on Holy Thursday, was suspended by order of Clement XIV., to avoid offending crowned heads. But the bull itself was not revoked. Permission is still granted in the present day to absolve in cases reserved in this bull,—no equivocal proof that it is still considered as in vigour: were the times favourable, I think it would be read again.

But lest I be accused of raking up grievances, of which no further mention is, and, in all probability, never will be, made, I shall adduce a still more recent fact, and call my reader's attention to the concordat concluded between the Courts of Rome and Naples, and dated February 16, 1818. Art I. declares that the *Roman Catholic religion shall be the only religion in the kingdom of the two Sicilies:* whence must be inferred the non-tolerance of every other. *The Roman Catholic religion,* it is added, *shall be maintained in all the rights and prerogatives belonging to it, in virtue of divine institutions and canonical sanctions:* by which last expression, all the pretensions, both ancient and modern, of the Court of Rome to temporalities, are admitted. Speaking of the new endowments and bishopricks, Art. IV. provides that *his Holiness shall make these endowments conjointly with the King.* Here the Pope

figures as a principal, while the King, although in a matter affecting property within his own dominions, plays a secondary part. With respect to unalienated ecclesiastical property, Art. XII. provides that it shall be administered by four delegates, two nominated by the Pope, and two by the King. Conformably to Art. XIV., the greatest number of religious houses it is possible to endow shall be re-established. Art. XV. empowers the Church to acquire new possessions; thus incapacitating the King for enacting mortmain laws with the view of limiting Church property. A stipulation immediately follows, investing all the future acquisitions of the Church with the same rights as those enjoyed by ancient foundations, which, added to what Art. XVI. states in form of exception, viz., "that as the "calamities of the times will not allow eccle-"siastics to be exempted from taxes, and other "public burthens, his Majesty would reserve to "himself the power of conferring favours upon "them under more propitious circumstances,"— gratifies the clergy with a most delightful prospect of future wealth. Art. XX. *pro coronide*, declares, that the archbishops and bishops shall be free in the exercise of their ministry. It is impossible to see the extent of this last provision, exempting, as it does, the prelates from all re-

strictions of the civil authority, with regard to their writings, words, or actions. Will it be believed that this is a concordat made in the nineteenth century, signed too by Cardinal Consalvi, the most liberal member of the sacred college? This single document may serve as a specimen of the actual views and pretensions of the Court of Rome.

Another fact, equally authentic, and, in my opinion, equally decisive, occurred in 1821, at the other extremity of Italy. Charles Felix, King of Sardinia, upon acceding to the throne, after the abdication of his brother Victor Emanuel, ordered that the oath of fidelity to him should be administered with the utmost solemnity. It was accordingly taken by all orders of the State. The clergy alone made some difficulties on the ground of some ancient canons, forbidding ecclesiastics to take an oath in favour of lay authorities. The Sardinian government wrote to the Pope, Pius VII., upon the subject; but his Holiness not only manifested no surprise at the circumstance, but considered that the objections were not unfounded. The charges of the archbishops and bishops of the Sardinian dominions, published on this occasion, will inform us of the result of the negotiation. The following is a faithful translation of that which was delivered by the archbishop of

Turin, of which all the others are mere copies. "Do "not be alarmed, venerable brethren," says the prelate, "at the word *Oath*. We are acquainted as "well as yourselves, with the provisions of the "General Councils, by virtue of which you cannot "be compelled to take an oath as simple ecclesias- "tics; but you cannot be ignorant of the power "which resides in the Roman Pontiff, of dis- "pensing, whenever, in his wisdom, he judges it "expedient, with the general provisions of the "canons. Now, it has been notified to us, that "the formula of the oath proposed to you has "been submitted to the consideration of the Holy "Father, and has experienced no objection on his "part. The formula runs thus: 'I, N. N., swear "'to be and to continue faithful to his Majesty "'Charles Felix, our legitimate sovereign, and "'to his royal successors, to maintain, to the ut- "'most of my ability, his full power and sove- "'reign authority, and moreover to inculcate "'and disseminate these sentiments on every "'occasion.' Thus," resumes the archbishop, "you can pronounce this formula with a safe "conscience; and in binding yourselves by it to "maintain, to the utmost of your ability, the full "power of the King, you are to understand, *by "the utmost of your ability*, the means which are "already prescribed to you, and which are con-

" sistent with your ecclesiastical calling; because " it is obvious, that the Pope, in wishing you to " be faithful subjects to the Sovereign, cannot " contemplate exempting you from the other laws " peculiar to your profession. The plenitude of " the sovereign power is in no wise contrary to " the supreme and divine authority conferred " upon his Church by Jesus Christ. The Holy " Father is also desirous that the ecclesiastics of " whom the oath shall be required, by command " of his Majesty, be informed of the permission " which he has granted. Since then the King " commands, and the Pope allows," &c. &c. I would willingly have interrupted the archbishop in this place, with the question, " And had the Pope not allowed it, what would have been the result of this refusal?" For he who possesses the power to grant, has also the right to refuse; and he who exercises his right, does injury to no one. There would also have been the less reason for complaint, as the matter would have remained in the common law. Who can urge the Pope to dispense with the provisions of the Councils?

The first reflection arising from the perusal of the above document is, that, according to the maxims avowed, even in the present day, by the Court of Rome, ecclesiastics owe a greater obedience to the Pope than to their temporal

Turin, of which all the others a… themselves
" not be alarmed, venerable … Pope's permis-
prelate, "at the word *Oath*. … as may be im-
" well as yourselves, wit… be found in cer-
" General Councils, by … mandates. I pass
" be compelled to take … which such an act
" tics; but you can… electing reader, and
" which resides in … that the original
" pensing, whence … Pope's permission, has
" expedient, wit…
" canons. Now … more singular happened
" the formula… Geneva. This country, hav-
" been subm… was reunited to France, was
" Father, a… French civil code. Upon its
" part. T… alterations were made in the
" 'to be … concerning marriage, by persons
" 'Ch… had perished their antiquated no-
" 'to b… inconveniencies of this change being
" '… the government of Geneva was
" '… enacting the former French law,
" … measures accordingly. The Sardinian
… loudly protested against this, as far
… Carrouge and some other places
… belonging to Savoy, but which had
… subsequently reunited to the Genevese
… by the acts of the Congress of
… If it be asked what was the cause of
… position on the part of the Sardinian go-

vernment, it was this,—In consenting to this cession, the King of Sardinia had stipulated, that the Roman Catholic religion should be maintained and protected in these places as it was before the cession, and that he should have the power of preferring to the Helvetic diet, and of supporting, by his diplomatic agents there, any complaint originating in the contravention of the treaty*. There is no doubt that the magistrates of Geneva could have successfully defended their enactment, by showing that a civil law touching marriage was not, in the least degree, detrimental to the Roman Catholic religion. They were, however, compelled to give way; the King of Sardinia was supported by the high allied powers, and the Republicans underwent the humiliation of revoking their new law, as far as concerned the places in question. Will it still be asserted, after this, that in those countries, where Catholicism reigns uncontrolled, it does not arrogate to itself the exclusive regulation of marriage†?

Of the above authentic and admitted facts, to

* Protocol of the Congress of Vienna, of the 29th March, 1815, and treaty between the King of Sardinia, the Swiss Confederation, and the Canton of Geneva, of the 16th of March, 1816.

† The Austrian laws concerning marriage, according to the principles upon which they are founded and developed in the *Austrian Ecclesiastical Law*, would have furnished the Genevese government with irrefutable arguments. But I am not aware that

Sovereign—that they only ...t be added, the the subjects of the latter, ... agents at foreign sion, and with such re... ...etter informed than posed by him, or wh... ...hat official accounts tain ancient canons, ... made known to the over other consi... ...ns of demonstrating to naturally sugg... ... well as to those who are will conclude ... appy results of emancipa- document, ...sure cannot be beneficial never bec... ...t is gradual, and prepared

A ... ...uations, nor till the effects of to t... ... be sufficiently ascertained by ing ... g... ...ently shown that there are but ... ...pretensions of the Court of Rome ... has sincerely receded—and that ...parent renunciation of them, for a long ... ever warrants their not being again ... forward at a favourable opportunity *. ... think it clearly follows, that an au- ... independent of the clergy, and even of ... Church, should have the care of removing ... pretensions, and this authority can be no ... than the government of the state †. Is not ... Church a particular society in the bosom of ... State! It ought, then, to pay as ready an

... itself of them. See §§ 113, 114, 244, 250, and 251, ... *Austria.*

* See Note, page 177.

† It is a desideratum with some, that the Catholic Church

obedience to the general laws of the State, as to those particular ones which the government has determined to be the conditions of its existence. The Roman Catholic Church must not be allowed to do, at its pleasure, that which may be prejudicial to civil society. Restrictions of some kind may be necessary: these should be adapted to the wants of civil society, and to the nature, extent, and importance of the religious establishment in question. A simple, unobtrusive mode of worship, consisting chiefly of theoretical principles, and of external acts wholly indifferent, without affecting temporalities, or presuming to enter the lists with government: such for instance, as that of the Quakers, and of numerous other sects, which peaceably exist throughout the United Kingdom—nay, even Roman Catholicism itself, when not professed by a numerous and compact population, not existing in the form of a great body, with its hierarchy, and its appendages of cathedral chapters, seminaries, &c.—Catholicism, in short, such as it is in England and Scotland, might, perhaps, be subjected to few, if any, special restrictions. But the Catholicism which for ages has advanced such overbearing

should renounce these pretensions, and retract certain of its doctrines. But, first, I am afraid that such self-denial must not be hoped for; and, secondly, I think that government runs less risk in securing its rights by its own laws, than in trusting to the professions of the ecclesiastical power.

pretensions, which, in so many countries, has succeeded in its daring encroachments upon the civil authority, and which always attempts so to do, wherever it can—the Catholicism whose centre is in a foreign country, whence its orders and instructions, part secret and part public, are conveyed and trusted to numberless agents all over the globe,—such a religion, I repeat, should be subjected to an inspection and controul totally different, and therefore to numerous restrictions. Those existing in France are generally known: those established in Austria are much less so; although, considered as a whole, they are, in my opinion, much better planned, and above all, more efficacious*.

Some persons think that an interference in the concerns of the Catholic worship, and the exercise of a certain jurisdiction over it, might with propriety be allowed to a Catholic, but not to a Protestant government. They likewise contend, that, with respect to some particular rights, such as the nomination of bishops, the power of taxing, and in some instances that of administering ecclesiastical property, &c. an indult from the holy see, or at least its consent (which is usually done

* I doubt not that there will be many persons who will ridicule my idea of proposing Austria as a good model for imitation. But let them read "Catholicism in Austria," and then every impartial person will be convinced, that it is nearly impossible to introduce more liberality into the foundations of the ecclesiastical law.

by means of a concordat) is necessary. In refutation of these errors, I need only refer my readers to the luminous doctrines laid down in Chapters I. II. and III. of "Catholicism in Austria." There (§ 188) it will be seen that the Sovereign is at liberty to enter or not into the society of the Church—that the rights and duties of a Catholic Sovereign are neither more nor less than those of a Sovereign professing a different religion. From paragraphs 227, 228, and 229, it will be evident, that the rights possessed by every government of *inquiring into*, and, if necessary, of *preventing* all that regards any association whatsoever admitted into the State, and, consequently, the Roman Catholic Church, proceeds from the very nature of civil society. Hence also arises the right of *protection*, having for its object the direction of ecclesiastical affairs to the welfare of the State as often as this can be done without injustice, that is, without compromising either individual liberty or the just power of the Church. From these three more important rights are deduced minor ones, respecting ecclesiastical power generally considered—the form of worship—ecclesiastical persons and property. All these rights are explained with great accuracy in the *Austrian ecclesiastical law*, of which I give an extract. But throughout the whole of

that exposition no mention is made of any *concordat*; and, on the contrary, it may be seen, that all the above system was established by imperial constitutions and decrees, and by the orders of the government.

Were it necessary to defend the conduct of Austria in this respect by other striking and at the same time creditable examples, either ancient or modern, they might easily be found. Saint Louis and Charles VII. enacted, under the name of *pragmatique sanction*, several laws upon ecclesiastical affairs without consulting the Holy See. The Empress of Russia, Catherine II., in the years 1782 and 1795, only by ukases, founded Catholic Episcopal Sees, reserving to herself the right of nomination; ordered, that Catholic prelates should receive no mandates but from her and the senate; forbade the publication of any document from the Court of Rome before the government had declared that it contained nothing contrary to the laws of the State; and threatened with the severest penalties such Catholic priests as should attempt, under any pretence whatever, to convert Russian subjects belonging to other communions. The Pope did not oppose the Empress, but conferred the canonical institution upon the bishops nominated by her. A similar practice obtains at this day, not only in

Russia, but also in that part of Poland which was reunited to the Russian empire in 1815.

If it be my advice to the English government to make no concordat with the Pope, still less would I counsel it to enter into mutual arrangements, under the form of convention, either with the Irish bishops, or with any other Catholics of the sister island, possessing or supposed to possess influence. This government should hear all opinions, and obtain every kind of information, but it cannot enter into any thing like negociation without compromising its authority, exasperating the passions, and finally failing of success*. Above all, it ought to avoid tying down its hands by any compact. It is a duty of parliament to enact proper laws†, which, after having been projected by the minister for the home department‡, should also be considered by the rest of the cabinet.

* Experience has shown, that there have been, during the last twenty-five years, resolutions of the Irish bishops inconsistent with the preceding ones, divisions among different parties of the Catholics, and even some points which the Pope himself could not set at rest.

† And these laws must be obeyed by every one. It is, therefore, ridiculous to hear certain Catholics say, "if emancipation be not granted unqualified, we will not accept it." The legislature determines the personal and real rights of citizens, without its depending upon the will of any individual, taken separately, to alter them.

‡ It is indispensably necessary that this minister should have an office expressly for Catholic affairs, (and the business of this office will not be very light), composed of enlightened persons possessing

As to the objection, that certain restraints cannot be adopted in a free country; that, for instance, they who embrace the ecclesiastical profession, cannot, with any justice, be prevented from receiving their education and instruction at Rome, in Spain, or in France; that there can be no lawful prohibition against a certain number of clergymen or monks living together in the same house, rented in common, or purchased in the name of one or several of them; against the same individuals wearing within doors any dress they please, and from observing certain rules to which they have voluntarily subjected themselves; against their receiving children as pupils, boarders, &c.: to all these objections I shall make one sweeping answer, an answer, in my opinion, as just as it is conclusive; it is this: that there are no restrictions, provided their object be the public welfare, which a government cannot impose; that there are no sacrifices, either of person or property, which individuals are not bound to make, when required for the safety of the State and the preservation of the constitution. It is true, these restrictions ought not to go

practical knowledge of these matters, and, above all, of great integrity. The expense of this office would be comparatively trifling compared with the advantages which would result from the pacification of Ireland.

beyond their object—they should, however, completely attain it; and it would be absurd to say, that a free government can do less for the defence of its liberties, than an absolute one for the maintenance of its despotism. Why should the English government become the dupe of artifice, or of false and deceitful appearances? It will be sufficient if, in imposing the necessary restrictions, individual liberty be compromised as little as possible. Thus, for instance, the government will not actually prohibit the going to study in foreign universities, colleges, or seminaries; but it may declare, that, from a certain time to be named, such persons as shall have been brought up or educated abroad, shall be ineligible to certain ecclesiastical dignities or offices, providing, however, at the same time, the necessary means of insuring to young ecclesiastics a suitable education in this country. Thus, likewise, it will not be merely declared, that several Catholic priests shall not live together; nor will it be inquired what dress is worn by them within doors: it might, however, in my opinion, be provided, without the slightest objection or inconvenience, that no more than three or four priests (unless very near relations) shall have the same habitation; that there shall be no place of worship or chapel annexed to their residence; that

they shall not assume, either in public acts or in inscriptions exhibited to the public, the appellation of any religious order—suitable penalties being provided in case of any infringement of these several prescriptions;—that in certain cases, and, for instance, when three or four ecclesiastics are living in common, the civil authority may require from them a declaration upon oath, that they do not belong to any regular order, nor to any monastic congregation whatsoever; that, if they have belonged to one, they now renounce it: especially, that they are neither dependent upon, nor corresponding with any foreign general, or provincial superior. In short, the English liberties are by no means incompatible with the imposing of such restrictions as are necessary for the full attainment of the proposed object; that is to say, the English liberties are no obstacle to the enactment of appropriate and efficient laws, by which all tricks, all contrivances for eluding, frustrating, and opposing their direction, should be, either in a special or general manner, prevented and punished. I will go further, and maintain, that if these laws are useful or necessary, the English liberties command their enactment.

This theory is that of the Austrian law. Paley, so often quoted by me, defends it very success-

fully (book vi. chap. x). This learned Englishman was thoroughly acquainted with the constitution of his country; and I, therefore, the more willingly avail myself of his arguments and authority, thinking that they will procure more credit to my own observations. After having put the question, whether, and how far, the civil magistrate has the right of interfering in matters of religion, Paley maintains, that "the jurisdiction of the magistrate is limited by no consideration but that of general utility: in plainer terms," he adds, "whatever be the subject to be regulated, it is lawful for him to interfere, whenever his interference, in its general tendency, appears to be conducive to the common interest. There is nothing in the nature of religion, as such, which exempts it from the authority of the legislator, when the safety or welfare of the community requires his interposition. It has been said, indeed, that religion, pertaining to the interest of a life to come, lies beyond the province of civil government, the office of which is confined to the affairs of this life. But, in reply to this objection, it may be observed, that when the laws interfere even in religion, they interfere only with temporals; their effects terminate, their power operates only upon those rights and interests which con-

"fessedly belong to their disposal. The acts of "the legislature, the edicts of the prince, the "sentence of the judge, cannot affect my salva- "tion; nor do they, without the most absurd "arrogance, pretend to any such power: but "they may deprive me of liberty, of property, "and even of life itself, on account of my reli- "gion; and however I may complain of the "injustice of the sentence by which I am con- "demned, I cannot allege, that the magistrate "has transgressed the boundaries of his jurisdic- "tion; because the property, the liberty, and the "life of the subject, *may* be taken away by the "authority of the laws, for any reason which, in "the judgment of the legislature, renders such a "measure necessary to the common welfare. "Moreover, as the precepts of religion may "regulate all the offices of life, or may be so con- "strued as to extend to all, the exemption of "religion from the control of human laws might "afford a plea, which would exclude civil govern- "ment from every authority over the conduct of "its subjects. Religious liberty is, like civil "liberty, not an immunity from restraint, but the "being restrained by no law but what in a "greater degree conduces to the public welfare."

I am fully aware of the repugnance which Catholics must necessarily feel at seeing their

religion under the control of Protestants (since the governing persons are Protestant); as well as that which Protestants must also experience at having to enter into so many and oftentimes tiresome details of Catholicism. This mutual aversion is still increased by poignant recollections, exaggerated prejudices, and all the inveterate customs, at variance with what I have proposed.

But is, then, the present state of oppression in which Protestantism holds the Catholics a preferable condition of society? And would the Catholics flatter themselves that their religious society can exist independently of the government? There always must exist between them relations, frequent, intimate, and essential to the welfare of society, both civil and religious; it cannot be otherwise. Now, to regulate these relations is indisputably the duty of government, and a duty which it cannot get rid of: for these very relations must either be hostile, like those between a master and his slave; or kindly, as those between a father and his child. To get off from this circle is impossible. If, therefore, there be any truth in what I have just shown, (which is more developed in the accompanying work,) it must be concluded, that this is not a question of taste, pleasure or choice, but one of rights, and consequently of duties. Rights are not intrusted

to a government, to be used as fancy or pleasure prompt; they exist for the welfare of the community, not for the gratification of the rulers. The same observation may be applied to all the duties of a government, which are deduced from its rights. Protestants and Catholics must, therefore, equally submit to them. The English government should consider itself as only accidentally Protestant with respect to the Roman Catholics *. It should be wise, prudent, and humane; it should become the sincere protector of Roman Catholicism. As Christian brethren, having the same system of morality, and many of the same tenets, Protestants and Catholics should reciprocally respect, love, and assist each other. It should be their hope, that they may one day be all united in one sole religion; and in the expectation of this desirable event, it should be their utmost endeavour to effect an approximation. I will say more, not an approximation only, but such an assimilation as may (independently of the principles considered as essen-

* No government whatsoever is, properly speaking, either Catholic, Protestant, or Mahometan. It is as incorrect to say, that a government belongs to this or that religion, as to affirm that the substance of marriage lies in the sacrament. Both these assertions may be made, in an improper sense, and with a view to some particular object; but then the general consequences usually deduced therefrom cannot be inferred.

tial by each party) render them all so perfectly equal, and so intimately blended together, in the eye of civil society, that one can scarcely be distinguished from the other.

After these reflections, alike applicable to Protestants and Catholics, I shall thus address myself to the former in particular: Catholicism always exists, and exists in spite of every wish and effort to the contrary. You have seen this by long experience. The foundations of that great and ancient establishment * are firm and immoveable; you cannot root up that venerable oak under whose shade so large a portion of the British population delight to repose. And even if you could, it would be a flagrant injustice, and a truly intolerable violation of the liberty of conscience †. What better course, then, is left for

* Let an instance be produced of a great establishment, a numerous society, a corporation of some importance, or of any political, commercial, or even scientific influence in any country whatsoever, which is *exlex*, that is to say, out of the inspection or control of the government. Impossible: for every great establishment must be very good or very bad, either for civil society in general, or for individuals. The public authorities cannot, therefore, be indifferent, nor excuse themselves from interfering with it.

Societies, few in number, simple, and having but little influence, may conduct themselves according to the general laws of the State, and their own by-laws. But great associations, I repeat, require special laws. What shall we say of an association which extends to foreign countries, interferes in education, public instruction, and almost all the concerns of life?

† "The confining of the subject," adds Paley in the above-

you to pursue, than to render the Catholics your friends? You can and ought, as members of the great society of man—you can and ought, also, as Christians. The government ought; for is there any thing more impolitic than to fence out, as an enemy, a great portion of the community, which, on the contrary, it can and ought to regulate, to govern, and even to protect in its religious concerns? This, however, must be done

quoted place, "to the religion of the State, is a needless violation "of natural liberty, and is an instance in which constraint is always "grievous. Persecution produces no sincere conviction, nor any "real change of opinion; on the contrary, it vitiates the public "morals, by driving men to prevarication, and commonly ends in a "general, though secret, infidelity, by imposing, under the name of "revealed religion, systems of doctrine which men cannot believe, "and dare not examine: finally, it disgraces the character, and "wounds the reputation of Christianity itself, by making it the "author of oppression, cruelty and bloodshed."

In another part of the same chapter, Paley, examining the question, which, of several religions, the government ought to establish or patronize, maintains that more efficacy, *cæteris paribus*, can be expected from the teaching the people their own religion, than from the converting them to another; "and this opinion," adds the same author, "if it be assented to, makes it the duty of the magis-"trate, in the choice of the religion which he establishes, to consult "the faith of the nation rather than his own." From these principles it must be concluded, that it would not only be the least feasible and most impolitic, but also the most unjust proceeding, to aim at openly destroying or secretly undermining Catholicism; which is the religion of the majority of the inhabitants of one of the greatest portions of the British empire, and which has also considerable numbers of followers in the other parts; and that, on the contrary, the surest, the most politic, the only just, and I will add without hesitation, the only one that can succeed, is to place Catholicism upon a legitimate and favourable footing.

with discretion and sincerity, and without the remotest idea of proselytism. Instead of an enemy partly secret and partly avowed, government will then acquire in Catholicism,—in Catholicism previously purified by wholesome laws,—an aid, an ally, an instrument of public prosperity *. It will see its means of power and influence increased and diffused in a manner truly astonishing. That Austria is fully convinced of this truth, has been proved by the preceding work. From the circumstance of the Church being conscientiously obliged to obey the civil authority, and promote, to the utmost of its ability, the objects of civil society (§§ 184, 185, and 188,) the government derives the right of employing the clergy in the performance of the acts of the civil personal state, in the public schools, in the promulgation of the laws, &c.; always, however, under the direction and superintendance of the magistrates. I do not say, that this is to be exactly imitated elsewhere—I merely point out the principle. In other countries, admitting the same principle, other consequences may be deduced, other applications may be made; but the results will always be of great utility.

* Voltaire said, "Priests, like noblemen, should be constrained to be useful without being dangerous."—Siècle de Louis XIV., Chap. xxxvii.

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Lastly, I would repeat to the Protestants, Paley's observations: "In religion, as in other subjects, truth, if left to itself, will almost always obtain the ascendency. If different religions be professed in the same country, and the minds of men remain unfettered and unawed by intimidations of law, that religion which is founded in maxims of reason and credibility, will gradually gain over the other to it. I do not mean that men will formally renounce their ancient religion, but that they will adopt into it the more rational doctrines, the improvements and discoveries of the neighbouring sect; by which means the worse religion, without the ceremony of reformation, will insensibly assimilate itself to the better. If Popery, for instance, and Protestantism, were permitted to dwell quietly together, Papists might not become Protestants (for the name is commonly the last thing that is changed), but they would become more enlightened and informed; they would, by little and little, incorporate into their creed many of the tenets of Protestantism, as well as imbibe a portion of its spirit and moderation."

Other striking advantages, and at the same time flattering to the Protestants, will accrue from the plan I propose. They will see the

King of England as much the head of the Catholic Church as he possibly can be (*salva substantia*), almost as much so as he is of the Protestant Church, because his situation will be precisely that of the Emperors of Austria, Russia, &c. They will see the political ties again renewed with one of the principal states of Italy situated upon two seas; and the King of England acquire, in that ancient common centre of nations, in that capital of the arts, in the grand focus of the religion and politics of both worlds, that influence which a great power ought to possess.

It is not (I would continue) my wish, that you, Protestants, should hazard anything. I do not advise you to throw down immediately and inconsiderately all the barriers which still oppose the invasion of Catholicism. Numbers among you are alarmed; nor, in my opinion, is your alarm so ill founded. But, even admitting it to be so, and supposing, moreover, this alarm to be felt by a small part only of the nation, and that part the less enlightened (which all will not agree to), still even that part is deserving of some respect; and if the opposite party cannot succeed in dissipating their fears, it must either redouble its efforts so to do, or take refuge in patience. It appears to me, however, that the only expatiating in arguments will not con-

duce to any agreement of opinions. So much has been said and written upon this subject within these last five-and-twenty or thirty years, that to add to it is hopeless. Such arguments turning, as they do, upon future contingencies, which frequently baffle all human foresight, must of necessity be vague and open to contradiction. This mass of purely speculative discussions, generally speaking, instead of enlightening, tends only to increase the darkness, and produce more perplexity. Let us then abandon these ineffectual means: let us rather adopt a different course —that of experiment; and let this be ably, but gradually, conducted. Let no further concessions be granted, without their being accompanied by conditions preparing a better state of things—let not the affairs of Catholicism go on any longer in any random direction, that is to say, conducted by persons consulting foreign interests, and obeying foreign impulses. I propose that, from this moment, Catholics be placed upon the same footing as Protestants, as to civil and religious rights, with the exception of admission into parliament only, which, however, must not be represented as for ever refused, but as reserved for future legislation at no distant period. In the mean time, let Catholicism be placed, as it ought to be, under the protec-

tion and direction of government—let the king be invested, by act of Parliament, with all the rights and prerogatives which other kings or heads of governments exercise elsewhere without opposition—let sound and wise regulations upon ecclesiastical matters be introduced—let them be faithfully observed. When Catholicism, thus remodelled and purified, shall have acquired a certain consistency, all fears must, as it appears to me, be dissipated; all opposition must cease, or become so feeble, as to be no longer deserving of notice, and the doors of parliament may then be open equally to Catholics and Protestants, with the universal approbation of the nation, and even of all Europe. By an opposite mode of action, that is to say, the Catholics pretending to everything, and this immediately, and without allowing either preparation or reasonable precautions—and the Protestants, on the other side, continuing to refuse, without considering the means by which they might be enabled to grant—both reasoning always upon the general question, without entering into the details—looking upon it as a very simple question, when, on the contrary, it is a very complicated one—each party insisting absolutely that they have reason on their side, and their adversaries are wholly in the wrong, when the fact is, that right and wrong

are mixed on both sides:—acting in this manner, I repeat, they may continue to move round upon this pivot for a hundred years to come, without advancing a single step, unless some extraordinary event occur, which shall suddenly extort emancipation. Such an event is precisely that which Protestants should dread, and endeavour to avert, The opportunity will then be lost for imposing upon emancipation the necessary restraints, and it is then that re-actions, retaliations, destruction of property, and a long train of calamities must be expected.

What shall I now say to the Catholics? There are at least as many good reasons to give them in favour of the plan I offer to their consideration, as can be adduced to the Protestants. But, in addressing myself to my Catholic brethren, I must consider the question a little more closely, both in a religious and political point of view. As to the former, I would say to them—Whence these fears for your Church? The gates of hell, you know, shall not prevail against it! It has flourished in the midst of persecution. How then can it suffer any harm, when, surrounded on all sides by an advanced state of civilization, a powerful and enlightened government shall declare itself its protector? Why do you fear that its protection will not be one of kindness and

sincerity? Would it not be, on the contrary, an evident proof, that its ancient animosities are extinguished, and that its old prejudices are removed? This reconciliation is equally recommended by your own interest and by that of the State: there is, therefore, every reason to believe that it will be sincere, both in its object and in its means of accomplishment. Besides, what cause for apprehension can you have in the protection and direction which Catholicism shall receive from government? Its consequences are nearly anticipated beforehand. The prudence of the English government will follow the examples given by Catholic countries abroad. The former relaxations from the penal laws—that which will now take place in granting you all civil and political rights, one only excepted, and that one only deferred—the complete toleration of hundreds of religious sects existing in Great Britain—all these facts prove, that when the Government is assured that the institutions of the country have nothing to apprehend from any particular mode of worship, it not only allows it liberty, but grants it all possible facilities, and only imposes such restrictions as are absolutely indispensable. You see, that even now the exercise of the Catholic religion is undisturbed—that the Government, by a pecuniary grant to the seminary, or

college, at Maynooth, assists in the education of a considerable number of your young ecclesiastics—that your prelates are respected—that they enjoy their titles without molestation—that, when giving their depositions before the parliamentary committees, they were treated with great respect—that government even winks at the numerous religious corporations which affect not the least concealment, the Jesuits openly avowing themselves as such, and designated as such by the public in Ireland, where also exist several convents of Franciscans, Dominicans, &c., recognised to be so in the depositions before the Committees. What reason, then, have you for fearing that what is avowedly the essence of Catholicism will not be preserved, when that which is merely accidental is respected? Why should you not rather place your greatest hopes in the salutary effects produced by the rights exercised by government—rights which will supersede hatred and persecution? The Catholic Church, as far as concerns whatever is human in its establishment, being as gradually perfectible as any other human institution (§ 6), why might you not rather hope that the protection of the English government will be the commencement of a happy futurity for Catholicism in general; and that one day, perhaps,

the Anglican Roman Catholic Church shall become the model for similar churches of other nations? When the wisdom and sincerity of the government on the one hand, and the intelligence of the public on the other, should reassure, and even inspire you with the greatest confidence, your submission and fidelity will be an additional incitement to the government to fulfil its duties towards you, and will remove every pretext for malevolence.

A few words, I think, will suffice to convince you that Protestantism will not make many proselytes among you. In addition to experience, which does not say much in favour of Protestant conversions, the following reflections are calculated to quiet you upon this point:—1st. When the two religions, Catholic and Protestant, shall be, with respect to their external policy, directed by the same authorities, the interest of proselytism must necessarily abate. 2nd. The Anglican Church, not professing as a tenet the exclusive salvation of those who belong to that worship, is disposed to a much greater tolerance, and consequently is less eager for conversions. 3rdly, and lastly, If Paley and other Protestants predict the conversion of Catholics to Protestantism, when both religions shall be placed quietly side by side, we are as much entitled to pre-

dict the contrary event, for the same reasons as Paley's, and for others peculiar to ourselves, upon which we more confidently rely.

As to the means to be employed in order to attain the great object you have in view—Catholic emancipation—I must observe, that as Catholics, no other means ought ever to be used but those which your religion allows, prayers, exhortations, and, above all, patience. These were the arms of the Catholics in the first ages, and that too (remember well) when they could have employed force (§ 199). You know that Jesus Christ, predicting to his disciples the persecutions they should have to endure for his sake, (something very different from not having a seat in Parliament,) told them, that they ought never to oppose force to persecution, but patience. "Possess your souls in patience," are his words. By which resignation also, you will acquire, as Catholics, greater merit with God. Let not my readers accuse me of despicable bigotry. Either we must close the gospel, and refuse to follow the example of the Founder of our Church, or it must be admitted that my observations are in perfect conformity with the principles of Catholicism. It will also be obvious that, in a religious point of view, those appeals to foreigners, those

of strength which are affected by fre-

quently renewing the accounts and estimates of the Catholic population, those muttered menaces or predictions of sedition, rebellion, or of the separation of Ireland, are wholly unjustifiable.

Whether these means are better in politics, is the second point I proposed investigating. Ireland, the ancient conquest of the English, has ever, since that event, constituted a part of the British dominions, although it was allowed to retain its parliament, its magistrates, and the appearance of a separate government. After the closer union in 1800, it became still more identified with the rest of the British empire. Whatever the number of Catholics in the united kingdom may be, that of Protestants is double. And, even were this not so, the Protestants ever since the exclusion, just or unjust, of the Catholics from the succession to the throne, and from offices of trust and power, (which is now also very ancient,) have been in possession of the power—certainly not a very peaceful possession—but one sufficiently firm as to render it necessary for those who dream of depriving them of it to calculate upon events very extraordinary, and not likely to take place. Hence it follows, that upon every principle, the political right ceases to exist in those who do not possess it *de facto*, and submission then becomes a duty. But theori

apart, and confining ourselves to what is practicable, is it by violence that the Irish Catholics flatter themselves that they will recover the plenitude of civil and political rights? Often have they made the trial, and as often have they failed. What avail numbers without an acknowledged and powerful head, with a money-chest like that of the Catholic Association, without artillery and military stores, without discipline, when opposed to all the powerful resources which a government like that of England is able to command, and knows so well to employ upon an emergency? Success, in such a case, by violent means, is a chimera.

I have said, *just* or *unjust* exclusion; for whether the one or the other, as soon as it is pronounced by the Parliament, which is the supreme authority, it becomes legal. Justice is only a rule for directing power; it is never the condition or measure of power; for, every one having his own definition of justice, nothing could be more unsteady nor more arbitrary. The Roman Catholics, therefore, excluded by Parliament from certain political rights, should consider themselves legally excluded, and not from a mere submission to force, but from a submission due to authority—as legally excluded as the S[illegible]s, and so many foreign Catholic families

from the crown of England, with this difference, however, that there is no appearance that the latter will ever be reinstated, while the former may expect to receive all their ancient rights if they conduct themselves with prudence.

But it will be said, ought not all the members of a civil society, paying the same taxes, contributing in the same manner by their persons and property to the welfare of that society, to enjoy the same rights?

Where is the authority for such an assertion? I would ask in my turn. At least I do not see that this equality has been observed in any ancient or modern State. It is evidently not the case in monarchies, and in aristocratical or mixed governments; among democracies, it is very difficult to find one, except it be a very small, or a very poor country, in which political rights have been, or are equal for all.

There is no doubt that such an equality would be desirable, were it possible. That it should be approximated to, as much as the circumstances of each country will allow, I readily admit; but from experience and reasoning, we are forced to conclude that it is not essential to civil society, and that there is a great difference between the equality of the civil rights almost

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being of one sex, rather than of the other—the
possessing a certain income, and this income of
a specific kind, could be constituted necessary
conditions for the enjoyment of political rights;
so could also the professing one religion in pre-
ference to another.

The exclusion arising from the difference of religion, will no doubt be exclaimed against as the most unjust *. It is not, however, clear to me,

* Paley proves, (Book vi. chap. x.) that religion may be a reasonable motive for exclusion. "It is possible," says he, "that such "religious opinions may be holden, as are utterly incompatible with "the necessary functions of civil government; and which opinions "consequently disqualify those who maintain them, from exercising "any share in its administration. There have been enthusiasts "who held that Christianity has abolished all distinctions of pro-"perty, and that she enjoins upon her followers a community of "goods. With what tolerable propriety could one of this sect be "appointed a judge or a magistrate, whose office it is to decide "upon questions of private right, and to protect men in the exclu-"sive enjoyment of their property? It would be equally absurd to "intrust a military command to a Quaker, who believes it to be con-"trary to the Gospel to take up arms. This is possible; therefore "it cannot be laid down as an universal truth, that religion is not, "in its nature, a cause which will justify exclusion from public "employments."

In another place, (Book vi. chap. vii.) Paley very successfully refutes the opinion of those, who think that the representation in Parliament is a natural right. "If this right be natural," observes he, "no doubt it must be equal; and the right, we may add, of one "sex, as well as of the other. Whereas, every plan of representa-"tion that we have heard of begins by excluding the voting of "women; thus cutting off, at a single stroke, one-half of the public "from a right, which is asserted to be inherent in all; a right too, "as some represent it, not only universal, but unalienable, and "indefeasible, and imprescriptible. We consider," he adds afterwards, "it so far only as a right at all, as it conduces to public "utility; that is, as it contributes to the establishment of good laws, "or as it secures to the people the just administration of these "laws. These effects depend upon the disposition and abilities of "the national counsellors. Wherefore, if men, the most likely by "their qualifications to know and to promote the public interest, be "actually returned to Parliament, it signifies little who returns "them."

As my own reflection, I will add, that it is of very little conse-

whether the making exclusion to depend upon that which is the effect of pure chance, be more just than to attach it to what is voluntary. If the

quence, or at least much less so than is thought, whether they are Protestants or Catholics; for certainly no more laws will now be enacted out of hatred to Catholicism. I am so decidedly of this opinion, that were I an Englishman, or an Irishman, and assured that Catholicism was to remain in its present state, neglected by the Government, a prey to every prejudice, and exposed to foreign influence, I myself, as a Catholic, would pray that this accomplishment of emancipation, which would consist of admission into Parliament, might not be granted; and I should argue thus: I, although a Catholic, enjoy, like every other Englishman, the benefit of English laws; while, at the same time, I am certain, that with a Parliament wholly composed of Protestants, the liberties of England will run no risk of destruction by means of Catholicism. In other respects, the Parliament being composed exclusively of Protestants, is of little or no consequence to me; for they do not legislate for themselves alone. Now, generally speaking, the laws which are good for fourteen millions of persons, are also good for an additional seven millions, interspersed among them, whenever there is no exception. Had I a claim to advance, or a good project to propose, would there be no other means of bringing the subject before the public, but by uttering it myself in the House of Commons? With what justice, then, would the Irish Catholics complain that this accomplishment of emancipation alone shall be deferred, especially if this postponement be made with the view of insuring success? Of what, I repeat it, would they, the happiest Catholics in all Europe, have to complain? For, on the one hand, even in the actual state of things, nothing absolutely prevents them from being, in every respect, as good Catholics as those of other nations; nay, perhaps better, on account of their sufferings: and, on the other hand, they enjoy, in common with all other British subjects, English liberties, and all the benefits, present and future, imparted by the institutions of a free country, with the prospect of seeing them still further enlarged, when the day of complete emancipation arrives. Let them impartially reflect upon this, and they must be convinced that their lot is truly enviable.

individual, born at a great distance from the capital—if a female—if a person poor either by birth, or other circumstances, must submit without repining, I see no reason why the Catholics should not submit likewise. If, with respect to the former, it be alleged that the fault is not theirs, and that they have no reason to reproach their destiny, I can say, with regard to the latter, that they have, on the contrary, cause for rejoicing, or at least for consolation, which the others, perhaps, do not possess; because, there is a virtue, on their side, in resignation—a virtue in every respect analogous to the religion they profess, and which promises them a recompense for all they suffer on account of that religion. The Catholic, also, should be just in not exaggerating the evils of exclusion, nor in attributing to the government motives more odious than those by which it is actuated. Paley's observation, in one of the passages above quoted, viz., that it is not the hatred to the Catholic religion which has caused the exclusion of its adherents, is still more true in the present day, with respect to the non-revocation of the exclusion. All that I have read and heard upon the Catholic question, since I have been in England, has convinced me of this truth, that it is not against the Catholic religion

itself that the doors of Parliament remain closed, but against the dangerous influence which it is feared it may have upon the independence of the temporal power, as well as upon all the religious and political liberties. Supposing this danger not actually to exist, the belief of it does—creates alarm in a great number of minds, and produces nearly the same effect in preventing the Catholic emancipation as the reality itself would do. To affirm that this opinion of danger is totally without foundation, is to tax several millions of persons with folly and unreasonableness, persons, too, of every class,—and at the same time to resist a host of undeniable facts, both ancient and modern. On the other hand, to say that danger exists to such a degree, that the concession of all civil and political rights to the Catholics, even if unaccompanied by any precaution or condition, would be inevitably followed by fatal consequences, also appears to me a bold assertion. In this conflict of opinions, the most judicious line of conduct is, to consider the question in the form of a doubt. What then must be done? Endeavour to dissipate this doubt, the real and sole cause of exclusion.

This end is not to be obtained by petitions, speeches, books, and pamphlets, to which counter-petitions, books, &c. will be opposed—nor

by numerous associations, by threats, and show of hostility, which, instead of rendering clear to all persons what is doubtful to many, will only irritate the passions, and increase the uncertainty. No; other means, better calculated and less abrupt, are necessary. These consist in so acting that Catholicism in Ireland may be, if I may hazard the expression, remoulded, cleared of all that is mischievous, and, above all, placed in such a situation, with respect to the Government, and the members of other persuasions, that, far from exciting fear, it may re-assure and conciliate men's minds. To whom does such a task belong? I repeat, chiefly to the Government. But as in this country the Government receives its impulse principally from public opinion, it also belongs to the individuals who are interested in the success of emancipation, and in the final settlement of this great national question,—the source of so much discord—the cause of so much weakness and misery. With this view, I should anticipate great advantages from associations, consisting of a limited number of prudent and wise persons, that should avoid discussions or public debates respecting their claims. It would also be desirable that government should encourage and direct them, with a gentle hand, to the

right path*. Their object would be to prepare the acts of Parliament necessary for establishing Catholicism upon a different footing from its present one, and to impart to it that new existence, of which I have already traced the outline, and of which I have exhibited a practical model, in the *Catholicism in Austria*†. To compare experience with theory is always more conclusive and, above all, more safe. But, in religious matters especially, in which every novelty becomes the object of suspicion, excites clamours, and gives rise to interminable disputes, and sometimes to sanguinary quarrels, in these matters, I say, to be able to affirm, "this is practised, without the least difficulty, in some Catholic country," appears to me to be an excellent safeguard of peace and public order. When the acts of Parliament, of which we have just spoken, shall have been for some time in operation, their

* None but laymen of influence, especially at the commencement, should take part in these associations. Clergymen, whether Roman Catholic or Protestant, would not be (at least with few exceptions) sufficiently impartial and dispassionate.

† I request my readers to observe that, when I present them with a model, I do not mean that it should be imitated in all respects, or followed as the exact standard of perfection. What I wished to demonstrate was, that the general principle of the system is rational and practicable, and attended with salutary effects. Besides, it is an acknowledged maxim, that laws ought to be rendered suitable to the different countries, and should coincide with time and place, and all other circumstances whatsoever.

infallible effect will be the gradual diminution and ultimate disappearance of every fear. Such a series of measures will then render the full admission of the Roman Catholics to all political rights the universal wish of the nation. Then will its spontaneous, and at the same time, wonderful consequences be the long wished-for abolition of the *Test* oaths, the perpetual oblivion of all dissensions, and a new and brilliant era of national prosperity.

END OF THE DISSERTATION.

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